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SELECTIONS FROM THE RECORDS

OF THE OFFICE OF THE

FINANCIAL COMMISSIONER, PUNJAB.

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as the ordinary working of the Revenue Department of the district goes; but in the opinion of Officiating Financial Commissioner the settlement records should be revised by the *Settlement Department* and the entries of the former settlement record should be restored by the Settlement Officers, as it would be highly unsatisfactory to allow the village papers to remain in a state which does not correctly record the legal status of a large body of the cultivators.

7. It is possible that if the entries of the former settlement are restored in the manner proposed, a large number of suits may be instituted by the proprietors of land to lower the status of the cultivators who were recorded at the first settlement as having the right of occupancy. It may be advisable to place the Amritsar Division under settlement again until the landlords shall have had time to institute these suits, so that the ordinary litigation of the Division may not be unduly swelled by an influx of such cases, and in order that the cases may, as far as practicable, be disposed of by officers of revenue experience in the Settlement Department.

8. Whatever may be the inconveniences which may result, Mr. Egerton is strongly of opinion that the settlement records cannot be allowed to stand as at present, and that the revision should be conducted by the Settlement Department. In no other way can the records be put into a satisfactory condition.

No. 287, dated 11th November 1868.

From—P. H. EGERTON, Esquire, Commissioner and Superintendent, Amritsar Division,

To—The Secretary to Financial Commissioner, Punjab.

I BEG to be informed whether, under the Punjab Tenancy Act, it is competent to Revenue Officers to correct the records prepared under Mr. Prinsep's settlement *proprio motu*, restoring entries of tenant right in accordance with the previous settlement, or whether they can act only on complaint.

2. The latter is my own opinion, but it is as well to anticipate the possibility of the opposite opinion being held and acted on before mischief shall be done.

No. 898, dated Camp, 1st December 1868.

From—T. H. THORNTON, Esquire, Secretary to Government, Punjab,

To—The Officiating Secretary to Financial Commissioner, Punjab.

WITH reference to Act XXVIII of 1868 *(An Act to define and amend the law relating to the tenancy of land in the Punjab)*, published in the *Punjab Gazette* of the 12th November, I am desired by the Hon'ble the Lieutenant-Governor to transmit, for the information and guidance of the Financial Commissioner, extract paragraphs 2 and 3 of a letter No. 356, dated 7th November, from the Secretary to Government of India, Foreign Department, and to communicate the following instructions.

2. Section 45 of the Act declares that "all proceedings of officers of Government in making or revising, prior to the passing of this Act, settlements of land revenue shall, so far as such proceedings are consistent with the provisions of this Act, and subject to appeal and revision when an appeal or revision is provided, be deemed to have been taken in accordance with the law;" and Section 6 provides that "every tenant whose name appears in the records of a regular or revised settlement heretofore sanctioned by the Local Government as having a right of occupancy in land, which he, or the person from whom he has immediately inherited, has continuously occupied from the entry of his name, or the name of such person, as the

case may be, shall be presumed to have a right of occupancy in the land so occupied, unless the landlord shall, in a regular suit, prove—

"(1) That within the thirty years immediately before the institution of such suit other tenants of the same class in the same or in adjacent villages have ordinarily been ejected from their holdings at the will of the landlord; or

"(2) That the tenant has voluntarily admitted, before any officer employed in making or revising a regular settlement of land revenue, or before any officer authorized to attest the entries in the record of such settlement, that he is a tenant not having a right of occupancy, and that such admission has been recorded at the time by the officer so employed or authorized."

3. It follows that all proceedings in the recent settlements of the districts of Gurdáspur, Amritsar, Gujránwála, Siálkot, Kángra, Lahore and Gujrát, whereby tenants previously recorded as tenants with a right of occupancy have been recorded as tenants-at-will, must be deemed invalid.

4. Accordingly it is necessary that the Commissioner of Settlements be directed at once to take measures for revising all records of the above settlements relating to the status of tenants in accordance with the provisions of Section 6; it is further desirable that the opportunity be taken of classifying tenants having, or presumed to have, a right of occupancy into the several classes described in Sections 5 and 6 of the Act.

5. With regard to the manner in which the above revision may best be effected, His Honor is of opinion that the requisite alterations of the record of rights will best be made by erasing, with red ink, all entries affecting the status of tenants, recorded at variance with the record of the preceding settlement, and making a fresh entry, in red ink, stating that the tenant in question has a right or presumptive right of occupancy under Section 5 or 6 of the Act, as the case may be. A printed notice showing the section and clause under which the tenant has been recorded as having such right of occupancy should be given to both tenant and proprietor; and in the case of occupancy tenants under Section 6 the notice should further specify the manner in which, and the conditions under which, prescriptive right of occupancy is open to rebuttal and the provisions relating to ejectment contained in Section 19.

6. With regard to the agency to be employed, I am to remark that, where the settlement establishments are still available, the duty of revising the records will, of course, devolve on the Settlement officials; but in the case of the districts of Gujránwála, Gujrát, Amritsar and Siálkot, from which the settlement establishments have been withdrawn, His Honor apprehends that the work of revision may be effected by the superior native officers who were associated in the recent settlement operations. I am to request, however, that the Financial Commissioner will, after consulting Mr. Prinsep, report his opinion on the subject, and at the same time state whether any, and what, additional expenditure will be required.

7. In reference to Sections 10 and 28 of the Act, I am to request that a report be furnished, after enquiry from Commissioners and District Officers, showing, for each district, the date which should, in the Financial Commissioner's opinion, be declared to be deemed the commencement of the agricultural year.

8. For the purposes of Section 22 it is determined that Urdu shall be considered the "Vernacular" of the Province, it being the language in which judicial proceedings and Patwárís' papers are recorded.

9. It is not expressly stated in the Act whether cases cognizable under Section 40 of the Act (*compensation for tenants' improvements*) shall be heard on the civil or revenue side of the Courts; but seeing that in the

cognate cases of compensation for ejectment (Section 19) the Civil Courts are declared to have jurisdiction, it is presumed that the Court referred to in Section 40 is the Civil Court.

10. To prevent misapprehension, it should be explained to District Officers, with reference to Section 42, that it is not intended that appeals from Tahsíldárs should lie *direct* to the Financial Commissioner, but merely that the Financial Commissioner, and not the Chief Court, is the final appellate authority in the cases referred to.

11. I am to request that, in communicating these instructions and remarks to subordinate officers, the Financial Commissioner will call particular attention to the injunction contained in paragraph 3 of the Supreme Government's letter.

NOTE.—A Vernacular translation of the Act is being prepared and will be issued shortly.

Extract (paras. 2 and 3) of a letter No. 356. dated Simla, 7th November 1868, from W. S. SETON-KARR., Esquire, Secretary to the Government of India, Foreign Department, to T. H. THORNTON, Esquire, Secretary to Government, Punjab.

PARA. 2. There will doubtless be many cases in which the records of rights, which have been recently prepared by the Settlement Commissioner, will require alteration, and His Excellency in Council presumes that it will be necessary to direct that officer to revise his late proceedings, so that they may be brought into accordance with the new law.

3. His Excellency in Council trusts that, while every effort is made to carry out fully the intentions of the Legislature, His Honor the Lieutenant-Governor will endeavour to discourage unnecessary discussions by the officers of the Government regarding the policy of the measures which have been adopted. This seems to the Governor-General in Council to be, on political grounds, very necessary.

No. 911, dated Lahore, 4th December 1868.

From—T. H. THORNTON, Esquire, Secretary to Government, Punjab,

To—The Offg. Secretary to Financial Commissioner, Punjab.

IN reply to your letter No. 643, dated 25th ultimo, regarding the extent to which the entries in the new settlement records of the Amritsar Division will be affected by Act XXVIII of 1868, I am desired to refer the Financial Commissioner to my letter No. 898, dated 1st instant, conveying the instructions of Government on the subject; and at the same time to intimate that, as respects suits relating to the status of tenants, the districts of that Division will again be placed under the Financial Commissioner's jurisdiction.

Extract paragraphs 1 and 2 of a Circular No. 86, dated Lahore, 23rd December 1868 (Book Circular No. 18 of 1868), from W. COLDSTREAM, Esquire, Offg. Secretary to Financial Commissioner, Punjab, to all Commissioners and Deputy Commissioners in the Punjab.

(Punjab Tenancy Act.)

1. CERTAIN general directions comprised in the correspondence* subjoined, on the subject of the Punjab Tenancy Act, are herewith circulated for guidance.

2. With regard to the revision of records of recent settlements, further instructions will shortly issue.

* No. 898, dated 1st December 1868, from the Government, Punjab, with enclosure.

No. 622C, dated 23rd December 1868.

From—W. COLDSTREAM, Esquire, Offg. Secretary to Financial Commissioner, Punjab,
To—The Settlement Commissioner, Punjab.

I AM directed to forward copies of correspondence marginally noted, on the subject of the Punjab Tenancy Act, and to request your careful attention to the instructions therein conveyed.

(*Punjab Tenancy Act.*)

Secretary to Government to Secretary, Financial Commissioner, No. 911 of 4th December 1868.
Secretary to Government to Secretary Financial Commissioner, No. 898 of 1st December 1868.

2. Paragraph 4 of Secretary to Government's No. 898 of 1st December 1868 points out that it will be necessary for you to take measures at once to revise the records of the recent settlements relating to the status of tenants in accordance with the provisions of Section 6 of the Punjab Tenancy Act, and that it is desirable that this opportunity should be taken of classifying tenants with right of occupancy according to the descriptions detailed in Sections 5 and 6 of the Act.

3. Paragraph 5 of the above-quoted letter shows the manner in which His Honor the Lieutenant-Governor considers it desirable that the above revision should be effected.

4. With reference to paragraph 6 the Financial Commissioner will be glad to be favoured with your opinion as to the agency necessary to be employed in these revisions and their probable cost.

5. Your particular attention is drawn to paragraph 11 of the same letter and of the paragraph of the letter of the Government of India to which it refers; and the Financial Commissioner requests that you will communicate its purport to your subordinates.

No 933, dated Amritsar, 8th March 1869.

From—E. A. PRINSEP Esquire, Settlement Commissioner, Punjab,
To—The Secretary to Financial Commissioner, Punjab.

AFTER making the usual changes of appointments and transfers rendered necessary by the approaching close of settlements in Kángra and Lahore Districts, and providing for such officers and trained staff as may be needed very shortly in the two districts that are to take their place, I am now able to submit proposals as to the agency necessary to be employed in the work of revising tenant entries in the records of finished settlements.

2. I enclose the usual schedules for the establishments that will be required as called for in paragraph 4 of your No. 6220, dated 23rd December. This extra burden of work is quite of an unforeseen character and has been imposed on this Department by the action of the Legislature. The new Act, XXVIII of 1868, simply invalidates the whole of our proceedings as regards the status, privileges, incidents of tenure, and rent,—in fact the entire relations which we have found to be the existing state of things as known to the parties and to the village between land-owners and that class of tenants who were erroneously recorded as having rights of occupancy at last settlement.

3. Section 45 of the Act has, it is true, a hard-and-fast proviso pretending to support the operations of a revised settlement, but owing to the conditions imposed being of a nature the introduction of which no one could foresee, in reality scarcely anything will stand that has been done. Indeed, it is impossible to form a judgment at present of what will stand or what will not. My impression is that if a classification has again to be made according to Sections 5 and 6 as to status, and according to the remaining provisions as to liability of eviction, enhancement, the power to alienate and improve and the entries regarding these Chapters (III, IV, V and VI) are again to be assimilated to the requirements of the Act, so as to be further hedged in and restricted by Section 2 and its rider, which in many places will bring us into the predicament of discovering that the Act after all does not operate at all, it is evident that

before the new records can be said to be in entire accordance with the new law nearly every entry in every village will have to come under review and consideration.

4. I believe Financial Commissioner is under the impression that the operations we are now called upon to undertake are not likely to prove of a serious character. I wish any one would only prove to me how such a conclusion can be arrived at. I have studied the Act in all its stages for the last two years. I have discussed its provisions with my subordinates. There is no mincing the matter. The work before us is delicate, complicated, and onerous in the extreme. When once we begin, it seems to me petitions will flow in for restoration of status on one side, and total denial of an actual right of occupancy, according to the four tests of Section 5, on the other; for escape from enhancement of rent on the one hand, and demands to apply *full* rent according to the scale laid down in Section 11.

5. Now it appears to me that our proceedings have been rendered invalid not only as respects deviation from the old record, but where that record was imperfect or silent, and omissions have been supplied, if these additions, based on what came across us as the undeniable aspect of usage as it prevails, are not supported by the provisions of the Act (which are in many parts arbitrary and leave no room for specialities), then these entries particularizing the facts or usages that prevail must be gone over again, and if counter to the Act must be altered or left out altogether.

6. Some of the complications which will result from carrying out this law I have endeavoured to bring under Financial Commissioner's notice in my No. 658, dated 11th December 1868, to which I hope I shall receive an early reply.

7. Being satisfied thus that the field of work we have to go over again, undo, alter, restore, or omit altogether, will be such as to give full employment to an officer of the standing and experience of a Superintendent, I have felt it to be imperative upon me to allow for a strong establishment in each parganah. I propose to have a Superintendent and his Judicial Office in each parganah, together with two men in the position of Munsarims, who are thoroughly acquainted with our system of record, to help the Superintendent in effecting the alteration in the manner proposed in paragraph 6 of Punjab Government letter No. 898, dated 1st December, which forms enclosure of the letter under reply. One of these Munsarims I have charged for. The other will be one of the two Kánúngos to be found in each parganah, whose pay of Rs. 15 or Rs. 25 received from District Budget will be supplemented by Rs. 15 more from Settlement Budget.

8. Over these parganah offices we must have a responsible officer in the position of an Extra Assistant Commissioner to supervise the whole, as it is no slight or easy matter to allow establishments to make alterations in valuable settlement records. Somebody must be held responsible in each parganah and over each parganah in the district.

9. I presume it is quite out of the question expecting Government to agree to such important work being supervised by English Officers. The cost would be very great, and the officers are not to be found who have a ready-made experience sufficient to enable them to take up work which of itself requires previous knowledge more or less to do efficiently, and free from the risk of further errors or informalities. I have therefore only provided for Native Officers of the grade of Extra Assistant Commissioner, and these I have picked out as the men who are painstaking and fit to be entrusted with such work, and with the control of Superintendents who will be under them.

10. I propose that the Extra Assistant Commissioner in each district shall himself have *direct* charge of the work in the *Sadr* parganah and supervise the remaining parganahs. In this way I am able to secure a vigorous control and yet save the expense of a Superintendent and his staff for one

parganah in each district, except Kángra, where the circumstances are exceptional, the Extra Assistant Commissioner there having other duties to attend to according to the arrangements I have previously reported.

11. I trust I am right in concluding that the duties of each officer in his separate jurisdiction, whether Extra Assistant Commissioner or Superintendent, will be *twofold.* He will have to go over (1) the classification of tenants and revise the entries, and if suits are instituted in this operation, as they are sure to be (I believe they will arise in one perpetual flow of litigation when once the people see the way the Act is to work), then (2) the special agency will be at hand at once to take up and judicially decide them according to the provisions of the new law.

12. For this purpose I have allowed to each parganah officer an executive staff and a judicial establishment; the latter the stronger of the two, as I am under the firm conviction the litigation will be very great, the contests angry, fair evidence very difficult to obtain, and the general irritation that will result will be such as to retard the completion of the work of revision.

13. To meet all this expenditure a special application must be made to Supreme Government for a further budget assignment. Apart from the prescribed budget schedules which contain the estimate of expenditure, I have prepared and enclose a synopsis which will show more clearly how the officers and establishments are to be arranged. There are remarks in the last column which explain the necessity for each item of outlay.

14. It will be further seen that the Extra Assistant Commissioner and officers whom I would recommend for employ are named and placed in each district and parganah according to their ability, qualification, knowledge of the country, and former connection with the settlements, the records of which they are to have the responsibilty of revising. I have to beg that this arrangement may be altered as little as possible or it will throw out the budget provision now asked for, which necessarily must be arranged with reference to salaries enjoyed by the officers whose names are entered. To the best of my power I have selected the men who are likely to do credit to the functions they are about to be called upon to exercise.

15. If the judicial work becomes heavy, the officers will have a very anxious time of it. They may be overwhelmed with hundreds of cases on their files at one and the same time. I predict the work will be extremely unpopular, but I will do my best to instruct them in these new duties, if, indeed, I am required to supervise them. The work entailed upon me will be very severe. Here are 7 districts with 25 new Courts empowered to take up the judicial work of a wholly novel and burdensome character. The litigation will be great necessarily. Appeals will, I fancy, be very numerous, from the simple fact that the provisions of the Act are such, as they have ignored and even overridden the village custom, and trampled upon some rights, such as the power to alienate and improve, which no one denies has, from time out of mind, belonged to those above, whom our Government have recognized to be absolute proprietors of the land even according to the old record. It is unreasonable to suppose that unsophisticated suitors will rest satisfied when such important interests are at stake, and recognized only in the aspect of an essentially arbitrary law, with the decisions or the interpretation of the Act given by Native Judges. We must be prepared then for the consequences, *viz.*, considerable dissatisfaction and a vast amount of appeals to the higher Courts.

16. Under these circumstances I recognize it to be my duty to afford every assistance to the Government in giving a good start to these operations, which have been put upon us by the Supreme Government, and in all candour and earnestness I will do my best. But I confess I do not look forward to the prospect before me without feeling that I shall be crushed with an extra burden of work of the most responsible character. There are upwards of 100,000 holdings which will have to be subjected to scrutiny, and probably more than one-half will require some kind of alternation or

other in two copies of the record, besides in those title deeds which we have distributed to the tenants themselves, for which fees have been paid, but which now by this law are declared to be invalid. These must now be all called in. Explanations must be offered to every land-owner and tenant in their presence, which operation alone, it is apprehended, will awaken a good deal of excitement, distrust and dispute. I trust then that these proposals I now submit will be supported to the utmost by Financial Commissioner.

17. It is possible, however, that it may not be the intention of Government to require me to continue long over the charge of so many as 25 additional Courts. I would suggest that after the Courts have been opened for two months or so, and each officer has understood what he is to do, and how he is to interpret the many entangled parts of the Act (a large number of Native Officers have assured me that there are several clauses in the Act they cannot comprehend), then an early opportunity might be taken to relieve me of the judicial control. I have several good reasons for asking this,—(1) that old settlements are closing which have to be reported; (2) that new districts are coming under settlement for the first time and on the frontier, such as Peshâwar, Hazára and Dera Ghâzi Khan, where all the English Officers are new and the work is likely to prove of a novel and difficult character; (3) that as I meditate taking my furlough this year, I am anxious to divest myself of *new* responsibilities and finish off the 7 districts that have been done.

18. I submit further, with all deference, that it would be a relief to me to know that a way will be made plain for my emancipation from these further complications; for if there is one reason more strong than all the others it is this, that after what has been said in Council, the animadversions almost amounting to abuse which have been heaped upon me, the discourteous way in which facts and arguments have been discredited, and the censure which I consider has been conveyed, whether intended or not it is impossible to say, from the publicity that has been given to the free comments offered in our proceedings in the official Gazette, and from none of the papers having been published which contain what may be considered a justification of what has been done; after being accused of bias, being called a "most violent partisan," being held up to public derision with even a taunt thrown out that we have "confiscated the beneficial rights of hundreds of thousands of households;" after it has been stated in Council by one member that our proceedings have been "really monstrous" and by another that they had been "monstrous illegalities," "invasion of the rights of property and of common justice" (notwithstanding that this charge of "monstrous illegality" was afterwards withdrawn by the member first alluded to, who then admitted that the proceedings "had some colour of legality"); and no steps have been taken by my official superiors on the spot to confirm or remove such ill-merited accusations, so that they may not cling to me for the remainder of my career; I do feel that it is quite out of place for me to occupy the position of an appellate authority in cases of the character that have been the subject of such strong denunciations.

19. It is fairer to the litigants and to the Supreme Government, who have thus disapproved of my action, that these Courts now about to be established should not be under my control; for if my predictions should be realized, if it should happen that there is excessive litigation, a great deal of public irritation, a large number of appeals, and the result of this formal enquiry should still confirm very much of what I have from time to time believed it to be my duty to place before Government, and the final stage of the question should not support what has been said by my opponents, there will be this satisfaction to all parties to know that I had nothing to do with it. I am unwilling to expose myself to what might any day be said against me that further undesirable results were due to my action, my enthusiasm, or worse still to my having a *judicial* bias. If my judgment has been cruelly assailed once in executive matters, as it has been, it might

be so again. It is due to myself then, and the best interests of this question, that I should be allowed now to hold myself aloof at any rate from all control of the coming judicial complications. In saying this I wish it to be distinctly understood that I offer no complaint regarding the usage I have had to bear, but simply that those who credit me with partisanship may know that I am quite ready to leave this field of enquiry to be completed by those in whom the Government of India are disposed to place confidence.

20. This is why I suggest that *judicial* control after the first two months of starting should be removed from my shoulders. This might be done by ordering the appeals to go to the Commissioners of Divisions. They could regulate the proceedings of these officers in their judicial capacity, while the mere altering of the entries in undisputed cases can be carried on by the same officers under my orders.

21. There will be 7 districts requiring establishments, which will cost monthly Rs. 11,830, including Gujrát. I have thought it necessary to frame the estimate for one whole year. Whether the work will be finished then, it is impossible to say. The actual alteration of undisputed entries may be completed by that time, but the litigation will certainly exceed the period of a year, if my apprehensions are correctly entertained. I have accordingly thought it better to ask for a fresh assignment of budget grant for the *whole* year. This will amount in each district to the following sums :—

		Rs.	
Lahore	...	24,180	NOTE.—The amounts vary as some districts have two, three and four parganah offices to be provided for, besides Extra Assistant Commissioner and his staff.
Gujránwála	...	19,500	
Gujrát	...	17,160	
Kángra	...	18,720	
Gurdáspur	...	12,480	
Siálkot	...	22,620	
Amritsar	...	27,300	
Total for one year...		1,41,960	

I propose that these operations be put into effect from the 1st April with the new year, and request sanction accordingly to a grant of Rs. 1,41,960.

22. If Financial Commissioner is disposed to approve of these proposals, and His Honor the Lieutenant-Governor can be moved to give the necessary orders for entertaining the establishments by that date, then, to facilitate reference, I have to request that the officers mentioned in the synopsis may be placed at my disposal, and that their transfers and appointments may be duly gazetted as detailed in the accompanying memo. All the places have been filled up except Parganahs Phálian and Khárian in Gujrát and Parganah Raya in Siálkot Districts, proposals for which will come up in a subsequent letter.

23. I ought to explain that though there were no alterations of status by summary enquiry or awards made at this settlement in Gujrát District, still revision will, I apprehend, have to be made to meet the requirements of Section 2 and its rider as regards all the Chapters of the Act except Chapter II, which alone refers to status, and this being the case, the ground must be gone over in that district also if the views I entertain and have expressed in a late reference to Financial Commissioner prove to be a correct interpretation of the Act under consideration.

24. The favour of early instructions is solicited if Financial Commissioner wishes these Courts to be opened, on the revenue side, under the orders of this Department, as I should like to know what further steps I am to take before I proceed on leave at the close of this month.

No. 227—1681, dated 23rd March 1869.

From—The Secretary to Financial Commissioner, Punjab,
To—The Secretary to Government, Punjab.

WITH reference to paragraphs 3 to 6 of your letter No. 898, dated 1st December 1868, relating to the revision of settlement records under the operation of the Punjab Tenancy Act, I am desired to forward letter No. 933, dated 8th March, from Settlement Commissioner, and to convey the Financial Commissioner's remarks and recommendations as follows.

2. The Settlement Commissioner proposes that the work of revision of the record prescribed shall be started at once in all the tahsíls of seven districts, and he proposes establishment sufficient for the purpose of making the requisite alterations in the records and for deciding the judicial cases which may arise in each tahsíl in consequence of the alterations, for twelve months. The cost of the establishment as proposed is Rs. 1,41,960 for the year, or Rs. 11,248 per mensem.

3. The first thing to be done, the Financial Commissioner observes, is to alter the records in the manner indicated in paragraph 5 of your letter No. 898, dated 1st December 1868, and to furnish the landlords and tenants concerned with notices of the changes which have been made in compliance with the provisions of the Act. Mr. Prinsep calculates that about 100,000 entries will be altered, and this estimate is probably not far from the truth.

Next will come the decision of cases arising from the alterations. These will be probably—

(1) Suits by tenants for status under Section 5.

(2) Suits by landlords for rebuttal of presumption under Section 6.

(3) Suits for enhancement or alteration of rent consequent on alteration of status.

4. These cases should be decided as soon as possible, no doubt; but Mr. Egerton does not think it practicable to provide Mr. Prinsep with the officers and establishment he asks for in the manner he proposes.

5. It would, perhaps, be the best and quickest way of doing what has to be done to put the establishments which are to be employed in Peshâwar and Dera Ghâzi Khan into the two Divisions of Lahore and Amritsar for six months, and to defer the commencement of work in the new districts until the next cold weather.

Mr. Egerton cannot see that it is possible to provide the officers required for an early and complete revision in Lahore and Amritsar Divisions in any other way but this.

6. It will be necessary after the judicial cases have been decided to make fair copies of the records. If the cases come in rapidly it may be possible for the establishments to do this before they leave the Divisions, but it may turn out that cases will not be brought forward rapidly enough to allow of their being decided early enough to permit the records to be faired before the special establishments leave the Divisions. This point can hardly, therefore, be decided beforehand.

7. If it is considered by Government inadvisable to postpone the commencement of settlement operations in the frontier districts, it would be possible to reduce the establishments which Mr. Prinsep proposes to employ by appointing one judicial officer only to each district with permanent establishment under him. This would delay the completion of the judicial work indefinitely, and the Financial Commissioner cannot recommend the adoption of it.

8. Again, it is not feasible to leave the decision of the judicial cases to the ordinary District Courts, which are already full of work.

On the one hand, then, if the revision is carried out in the manner proposed by Mr. Prinsep, an extra budget provision of Rs. 1,15,000 must be obtained; and

even if this is done, it will be impossible to provide the establishments required without disorganizing the administration of a large number of districts. On the other hand, it will be necessary to postpone the settlement of Pesháwar and Dera Gházi Khan for six months, or it may be for a longer period.

9. Under the second alternative, it will be unnecessary to obtain a further budget provision. The work will be under the superintendence of European officers, which Mr. Prinsep himself desires. The operations of the Settlement Department will be retained within a manageable compass, and the work of revision, which is very important, will be well and completely done. The Financial Commissioner does not hesitate, therefore, to recommend the adoption of the second alternative.

10. Mr. Prinsep in paragraphs 18 to 20 of his letter mentions reasons why the superintendence of the Judicial Courts charged with these revisions should not remain under him, and Mr. Egerton fully sympathizes with Mr. Prinsep in the feeling which has led him to make this proposal, not because he thinks he would allow any opinion of his own to bias him in the execution of justice according to law, but because it would always be possible to allege such bias and to expose Mr. Prinsep's decisions to misconstruction in a manner which would be most painful to him. The Financial Commissioner, therefore, trusts that Mr. Prinsep may not be placed in such a position, and he accordingly recommends that the appeals from the Settlement Officers be heard by the Commissioners or Additional Commissioners of the Amritsar and Lahore Divisions for the districts in those Divisions, and by the Commissioners of Jullundur and Ráwalpindi for the Kángra and Gujrát Districts respectively.

No. 569, dated Lahore, 14th April 1869.

From—T. H. THORNTON, Esquire, Secretary to Government, Punjab,

To—The Secretary to Financial Commissioner, Punjab.

I AM desired by the Hon'ble the Lieutenant-Governor to acknowledge receipt of your letter No. 227 of the 23rd March, with its enclosures, from the Settlement Commissioner, relating to the revision of settlement records under the operation of the Punjab Tenancy Act.

2. His Honor is by no means prepared to suspend operations in the districts in which settlement operations have been newly organized, as he would consider this quite a disastrous step. Neither does he think that it would be expedient to hurry through the revision of the settlement records by appointing establishments for the purpose in all the districts at once. On the contrary, he considers it to be most desirable and essential on many grounds that we in the first instance proceed very deliberately, regarding our proceedings, at the outset, as in fact tentative only.

3. It appears certain, as pointed out by Mr. Prinsep in his 3rd paragraph, that much will be found in practice to admit of uncertainty and doubt in carrying out the provisions of the Act. And it is moreover, in His Honor's opinion, most desirable that before proceedings are instituted on a large scale the people have an opportunity afforded them of judging for themselves of the real bearings of the matter, in regard to which it seems impossible to doubt that the cultivating classes in general have as yet but very undefined ideas.

4. The Lieutenant-Governor is of opinion, therefore, that operations should for the present be commenced in one district and in one parganah of that district only; and the parganah with which it appears to him desirable to commence first is the Patháunkot parganah of the Gurdáspur District, as partaking of both hill and plain; so that the proceedings carried on in it will prove instructive to the people of both Kángra and the Bári Doáb. For the duties of this parganah, it is proposed to transfer Pohlu Mal from the Kángra District as Superintendent; and his supervision might, His Honor thinks, with advantage be entrusted to the Extra Assistant, Qaim

Ali. It would appear that the cost of proceedings in this parganah has been already provided for in the budget; but if any additional outlay be required a special application can hereafter be made to the Supreme Government. His Honor has suggested the Pathánkot parganah as it appears to him, all things considered, to be the one in which it will prove most advantageous to make a commencement; but if any other be preferred by the Commissioner of Settlements, he will be prepared to consider any proposal to this effect.

5. In the meantime all petitions that may be given in, for or against alteration of the existing record, in other parganahs and districts should be received and recorded, and a list prepared of them; the petitioners being informed that they will be taken up and disposed of when revision proceedings are set on foot in the parganah to which each respectively appertains. His Honor thinks it highly probable that the Supreme Government will hereafter call for information calculated to show from time to time how the Act is likely to work; and in this event the record of suits thus maintained, and the results of proceedings carried on in the first experimental parganahs, cannot but prove of great value.

6. The general direction and control of these proceedings should certainly remain with Mr. Prinsep, but the Lieutenant-Governor agrees with him and the Financial Commissioner in thinking that Mr. Prinsep should be relieved of the duty of hearing appeals, which can very suitably be undertaken, for the present at all events, by the Commissioner or Additional Commissioner of Amritsar.

No. 2394, dated 26th April 1869.

From—The Secretary to Financial Commissioner, Punjab,

To—The Settlement Commissioner, Punjab.

WITH reference to his No. 933 of 8th March, forwards copy of Government No. 569 of 14th April, conveying orders regarding the agency to be employed in disposing of proceedings under the Tenancy Act, and, with reference thereto, requests that revised proposals may be submitted showing what subordinate establishments should be employed in the Pathánkot Parganah, where it is proposed to commence operations.

Remarks, with reference to the memo. by Mr. Egerton, of which a copy was forwarded with No. 2315 of 21st instant, that the principles of procedure are therein laid down, but that according to the orders of Government now forwarded, the action to be taken by the Settlement authorities should at present be confined to the Pathánkot Parganah.

No. 348—2395, dated 26th April 1869.

From—The Secretary to Financial Commissioner, Punjab,

To—The Secretary to Government, Punjab.

WITH reference to your letter No. 569 of 14th April, I am directed to forward a copy of No. 2394 of 26th instant, conveying instructions to the Settlement Commissioner regarding the revision of settlement proceedings under the Tenancy Act.

I am also desired to point out that the Amritsar Division, to which the tenancy enquiries primarily relate, was withdrawn from the operation of Section 21, Act XIX of 1865, by Gazette Notification No. 487 of 27th August 1867, in which settlement operations were declared to cease from 1st October 1867.

In order to carry out the instructions contained in your letter under acknowledgment, and especially paragraph 5, it will, in the Officiating Financial Commissioner's opinion, be necessary to declare the Amritsar Division again under settlement *quoad* cases falling under the Punjab Tenancy Act, so that proceedings connected with those cases will be on the Revenue side. But if

there be any doubt as to the power of Government to treat tenancy cases as a class distinct from other land suits under Section 21 of Act 19 of 1865, I am to suggest that the Government Advocate or the Judges of the Chief Court might be consulted.

The Officiating Financial Commissioner is of opinion that they are shown to be a distinct class by the fact that the Punjab Tenancy Act is specially intended to provide for them.

No. 182—1595, dated 5th June 1869.

From—Lieutenant-Colonel J. E CRACROFT, Offg. Commissioner and Superintendent, Lahore Division,
To—The Secretary to Financial Commissioner, Punjab.

WITH reference to Mr. Secretary Thornton's No. 569, dated 14th April 1869, to his address, a copy of which has been forwarded to this office by the Settlement Commissioner, has the honor to forward copy of a letter No. 236, dated 3rd instant, from Deputy Commissioner, Gujráuwála, for orders, with his concurrence in the gist of Lieutenant-Colonel Babbage's 3rd paragraph and the obvious observation that the Act is law, and that without the concurrence of the Legislature its provisions cannot well be evaded.

No. 236, dated 3rd June 1869.

From—Lieutenant-Colonel H. P. BABBAGE, Offg. Deputy Commissioner, Gujránwála,
To—The Offg. Commissioner and Superintendent, Lahore Division.

WITH reference to your Circular No. 62—1251, dated 12th May 1869, regarding the correctness of the settlement record, I have the honor to bring to your notice that but few petitions are received in that shape, *viz.*, for amendment of settlement records merely.

2. The petitions received relate to the actual possession of the ground, and not to the mere entry in the record, which is perhaps not even mentioned in some petitions.

3. It would be manifestly a hardship to postpone the hearing of such petitions. In some cases a tenant recorded as hereditary in 1855-56 might now be ousted, and in others an owner justly entitled to entry might be debarred of his rights, and both parties would have to wait for justice for an indefinite time until settlement work could be again revised, and I have already passed orders in a few such cases, having regard to the circumstances of each case and the record made at the settlement of 1855-56, but not directing any amendment of the record of 1866-67.

4. I hope that this course will meet with your approval.

No. $\frac{493}{3489}$, dated 14th June 1869.

From—The Secretary to Financial Commissioner, Punjab,
To—The Secretary to Government, Punjab.

WITH reference to your letter No. 569, dated 14th April last, I am requested to forward the accompanying letter, in original, from the Commissioner of Lahore, No. 182, dated 5th instant, and its enclosure, and to state that in the Officiating Financial Commissioner's opinion all cases in which the actual possession of land is involved, whether the tenant sues for possession against the proprietor, or the proprietor sues to oust the tenant, should be heard at once, and judgment passed by the ordinary Courts in those districts where settlement operations have closed, and by the Settlement Courts where they are in existence.

2. The tenant in these cases could only sue for possession by virtue of the entry of his right of occupancy in the previous settlement, which entry has been altered in the present settlement to one of tenancy-at-will, in virtue of which the proprietor has custed him. The converse case of a tenant

does not fetter his discretion. It seems clear that neither Section 11 nor Sections 13 or 14 have any applicability to a revision of settlement. The Officiating Financial Commissioner would recommend that none of the entries about rent be touched until it has been laid down by the Civil Courts that under the Act they are generally invalid when opposed to the entry in the preceding settlement, and unprotected by an agreement or by a decree of Court. So much in reference to (1) enhancement and (2) abatement. As to (3) remission no remarks are needed, as the subject is independent of the settlement record. As to the commutation of rent in kind (4), the Officiating Financial Commissioner believes that in the late revision of settlement commutation has been made from kind to cash or from cash to kind by the authority of the Settlement Officers, and that therefore their proceedings are opposed to the Act. Two courses are open,—either to revise each entry or to make a general note in the settlement record which shall comprise this as well as the other matters falling under Chapters 4, 5 and 6. The Officiating Financial Commissioner recommends the latter course. It may be that in many cases the parties have now acquiesced in the new arrangement, and it therefore seems preferable to leave them to act as they please, it being arranged that they shall receive due information of the law.

7. As regards Chapters 4, 5 and 6, and the 4th part of Chapter 3, the Officiating Financial Commissioner then suggests that a remark to the following effect be entered in red ink, signed by the Extra Assistant Commissioner, in the beginning of each settlement misl, both in the Government copy and in the copy in the possession of the Patwári :—

"Nothing in this misl which relates to the subjects treated of in Section 16 of Chapter 3 or in Chapters 4, 5 and 6 of the Punjab Tenancy Act shall be considered valid if opposed to the entries made in the first regular settlement unless it is supported by an agreement or a decree of Court, or is valid under Section 45 of the Act."

8. The correction of the entries of *status* and the insertion of the general note in the Patwárí's copy of the settlement misl should be made simultaneously with the correction of the Government copy, and each revised entry should be signed by the Extra Assistant Commissioner.

9. There remains the very important question of correcting the extracts of the settlement record given to each proprietor and cultivator. As these have been given authoritatively and on payment made, it would not be equitable to leave them uncorrected. Similarly, where any document containing extracts from the wájib-ul-arz has been distributed by authority, the remark or note now to be made in the settlement misl should be copied on the document under the signature of the Tahsíldár of the parganah. The Patwári might be charged with this duty for the villages of his circle, and the Tahsíl Kánúngo should test the corrections before taking them to the Tahsíldár for signature.

10. Further, each Patwári should be required to inform all the proprietors and cultivators of the alterations that are made in the settlement records, and also of the purport of the general note entered therein as above proposed. But any attempt to explain the minutiæ of the Act should be avoided as the provisions of the Act are somewhat complicated, and it would not be safe to trust the explanation of anything beyond its broad features to the officials who will be employed on this duty.

11. To sum up, it is proposed that in each district an Extra Assistant Commissioner, or a Tahsíldár with settlement experience, shall supervise the operations of a Patwári and a Kánúngo in making—

1st—Corrections of the status of tenants whenever the entry is opposed to the record of the first settlement and is not supported by a special written agreement or a decree of Court.

2nd—In entering on each misl a general note showing the operation of Section 16 of Chapter 3 and Chapters 4, 5 and 6.

In performing this work villages should be taken up according to Patwárís' circles, the Patwári of the circle being in attendance and assisting.

Secondly, in order to correct the extracts from the settlement record furnished to each proprietor and cultivator who now has a right of occupancy, the Patwári of each circle, immediately after getting his own copies of the record corrected and signed, shall proceed to his circle and collect all the extracts, set aside those for correction, and correct them in red ink. He shall then take them to the tahsíl, where they shall be attested by the Kánúngo and signed by the Tahsíldár ; after which he shall return them to the owners ; and it is to be remembered that where, in any extract or copy issued authoritatively by the Settlement Department, any general provision has been entered on matters comprised within Section 16 or Chapters 4, 5 and 6, the general note indicated in paragraph 7 of this letter is to be copied on to the said extract or copy. Having distributed the extracts, the Patwári should explain the purport of Section 16 of the Act, and add that where the entry in the former settlement is contrary in this particular to the entry in the revised settlement it is open to the parties concerned to lodge a petition in the Revenue Court (it being of the nature of a settlement petition). He should further read the general note.

No. 160, dated 19th October 1869.

From—E. A. Prinsep, Esquire, Settlement Commissioner, Punjab,
To—The Secrtary to Financial Commissioner, Punjab.

In reply to your No. 6105, dated 11th instant, I lose no time in submitting the information called for.

As regards paragraph 2, I have to acquaint Financial Commissioner that the districts in which settlement operations are now going on are—

Hazára.
Montgomery, including Muktsar.
Pesháwar.
Dera Ghází Khán.
Parganah Unah and Shahpur in the districts of Hoshiárpur and Gurdáspur.

In none of these five circles has any alteration been effected as regards tenant entries. The entries as in the old records stand untouched, so that no steps are required to be taken here to put in force the provisions of the Tenancy Act, clause 6 and last clause.

2. In reply to paragraph 3, the districts from which Settlement Establishments have been withdrawn by reason of settlement operations having been concluded are as follows :—

1. Amritsar.
2. Gurdáspur.
3. Siálkot.
4. Lahore.
5. Gujránwála.
6. Gujrát.
7. Kángra.

3. In (7) *Kángra* Financial Commissioner has, in his No. 5330, dated 1st September 1869, already directed that no further revision under the new Act will be needed. I have informed Mr. Lyall, Settlement Officer, to this effect. Whether this order is sufficient or not, it is not for me now to say. The order has come from superior authority that no revision is necessary, and it will be acted upon.

4. In (6) Gujrát there has been no alteration of *status*, as formal enquiries were made at last settlement, so that as regards Section 6 of the Act no revision will be needed here.

5. There remain five districts—Amritsar, Gurdáspur, Siálkot, Lahore and Gujránwála. In none of these districts are there at present any establishments which were employed in settlement, as trained men have been transferred to the new settlements.

As regards *officers*, the following only are to be found in the subjoined districts :—

(1). *Amritsar.*—(1) Agha Kalbabid, Extra Assistant Commissioner, had charge of the settlement ; is now Extra Assistant Commissioner. (2) Gobind Sahai, Tahsíldár of Amritsar, was Settlement Superintendent in Parganah Zafarwál, Siálkot District, but was not employed in this district. (3) Mehr Chand, Tahsíldár of Tarn Táran Parganah, was Settlement Superintendent of Parganah Raya (now in Siálkot, then a part of Amritsar), but he died a short time ago.

(2). *Gurdáspur.*—The Extra Assistant Commissioner in charge of this settlement was Gopál Dás, who is now engaged in Pesháwar Settlement. The only Tahsíldár engaged in the settlement was Shankar Dás, who died at his post some years ago.

There is no officer here, now serving in the district, who was employed in the settlement.

In Parganah Patbánkot, Maháráj Kishen, the Superintendent of Talukas Shahpur and Kundi, might easily be employed with his establishment for this parganah. For the three remaining parganahs some new men will have to be employed, though I confess I do not know who to recommend.

(3). *Siálkot.*—Ámi Chand was the Extra Assistant Commissioner of this settlement, who is now in Kángra District. None of the Tahsíldárs at present in the district were employed in the settlement, so there is nobody we could utilize here.

(4). *Lahore.*—Muhammad Hyát Khán is Extra Assistant Commissioner in this district, and had charge of the settlement, but the Gazette of the 30th ultimo, just received, notifies his transfer to Pesháwar.

There are also two Settlement Superintendents here, *viz.*, 1) Kádir Bakhsh, Tahsíldár of Parganah Chunián, who conducted the settlement of Parganah Sharakpur ; and (2) Badri Náth, at present Tahsíldár of Sharakpur, who was a Superintendent in Gujránwála, not in this district ; still there are two officers available here.

(5). *Gujránwála.*—Gopál Dás was Extra Assistant Commissioner in charge of settlement, and is now engaged in Pesháwar Settlement, from which he cannot be spared. Agha Muhammad, at present Tahsíldár of Gujránwála Parganah, was a Superintendent in Lahore District, but as he is acquainted with the procedure followed in new settlements, he might be employed here.

There is no one else I can think of just at present.

6. Thus it will be seen that in three districts, Amritsar, Lahore and Gujránwála, there are officers who might be charged with this duty of revision, but in Gurdáspur and Siálkot there is nobody.

7. If I may be allowed to offer an opinion, I would suggest the following :—

Amritsar.—Extra Assistant Commissioner Agha Kalbabid.

Lahore.—Extra Assistant Commissioner Muhammad Hyát Khán, but failing him, as he has left for Pesháwar, Badri Náth, Superintendent of Sharakpur.

Gujránwála.—Agha Muhammad, Tahsíldár.

Gurdáspur.—Extra Assistant Commissioner Qaim Ali.

Siálkot.—Gobind Sahái, Tahsíldár of Amritsar (who was employed as Superintendent in the Settlement of Siálkot), might exchange places with Hurgo Lál, the Sadr Tahsíldár of Siálkot, as a *temporary measure only*, on the promise to each to return to their respective tahsíls. While so transferred to Siálkot, Gobind Sahái might do the revision work in this district.

8. So far for *officers* to superintend and be responsible for the dut y Under each of these I would place in *each* parganah one Munsarim, one Náib-Munsarim and two subordinates to save expense. The sharpest Kánúngo or selected Patwári might be told off as the two men to carry out the clerical part of the work of revision, acting under the orders of the supervising officers. Even then I consider there will be great risk in making over such valuable records as those of the new settlement to be placed in hundreds in the hands of these subordinates, who might in other respects take advantage of the position given them to effect material alterations not of an authorized nature.

9. As far as I understand the instructions given in Punjab Government letter, which forms enclosure to your letter, the arrangements required to be carried out could be thus given effect to as regards *status* or *such entries as are affected by Section* 6.

But it appears to me that there are numerous other entries in the new records relating to incidents of tenure, amount and principle of rent fixed or enhanced, the power to sub-let, alienate, inherit and improve, which do not agree with the entries in the old records or with the provisions of the Act.

I presume these have likewise to be altered, if the Act is to be put fairly into force. If this is to be done there must be a certain amount of classification as given in Section 5, and this will involve the necessity of going carefully over the whole ground again in as many as 100,000 holdings I stated in my annual report, but deducting Kángra District, which has been specially exempted under orders of Financial Commissioner, probably this number will be reduced to some 80,000 holdings.

10. The Act does not maintain things as they were merely with respect to Section 6. There is still that rider to Section 2 which has to be carefully attended to as regards all the other chapters, save and excepting Chapter II. By this rider every entry if it appears in the record of a regular settlement once previously sanctioned is made to have the force of an agreement, "*if attested by a proper officer.*" This is the only and sole condition. As we all know that these entries appear in either the old khataunís, khewats and wájib-ul-arz, and such documents invariably bear the signature or seal of an attesting officer, it is evident, as I have previously brought to notice in my letters No. 599, dated 18th November 1868, No. 658, dated 12th December 1868, and No. 1014, dated 23rd March 1869, to address of the Officiating Financial Commissioner's predecessor, who agreed with me on these points,* that the provisions of the Act as in the rider to this Section 2 will involve a far more minute scrutiny and restoration of the entries of the new settlement, so as to put them in accord with the entries of a former settlement, than seems to be contemplated by His Honor the Lieutenant-Governor in paragraph 2 of his letter under consideration.

* *See* paragraphs 4 and 5 of Financial Commissioner's memorandum with No. 2315, dated 21st April.

11. At least so I understand the Act. I may be wrong in my interpretation of it. I am sure Mr. R. Egerton was of the same opinion with me. If, however, this rider to Section 2 taken in conjunction with the last section of the Act is not to be regarded, then instructions to that effect can be issued, and they will be strictly attended to. Putting this aside, the work of revision can be carried into effect in the simple way now enjoined.

12. In replying to this report I have to request that Financial Commissioner will issue explicit instructions on all the points herein adverted to, that the responsibility of complete or incomplete execution of the new Act in the way of revision may not solely attach to this office.

No. 599, dated 18th November 1868.

From—E. A. PRINSEP, Esquire, Settlement Commissioner, Punjab,

To—The Officiating Secretary to Financial Commissioner, Punjab.

MR. LYALL and I being at issue regarding the true interpretation to be put on clause 2 and its rider of the Punjab Tenancy Act, I deem it better to refer to Financial Commissioner that there may be no doubt or further misunderstanding in the matter.

2. The memorandum of the question put as drawn up by Mr. Lyall is herewith enclosed, and I request you will place it immediately before Financial Commissioner and obtain for me the exact instructions I am to give Mr. Lyall, who does not believe it to be the intention of the framers of the new Act to exclude the operations of the revised settlement, such as we have been making, from the benefit of Section 2 and its rider.

3. If I am right in thinking, as we certainly all thought in the late Murree Committee, that the regular settlement was intended only to apply to a *first settlement*, then it follows that what has been maintained right or wrong for a first settlement, so that the present revision should not have effect upon mere formal entries, will equally be maintained at any future settlement; so that "all the entries attested before a proper officer" at last settlement will virtually become agreements not only now but for hereafter.

4. The clause may be a mere rider, but it has been *deliberately* inserted after the suggestions of the Murree Committee urging its omission have been unheeded, and its one aim has undoubtedly been to maintain what was done at last settlement, as Sir Richard Temple, the mover of the Bill, tells us " this was necessary to guard the tenant rights secured by the settlement." What settlement records, those of the present? Certainly not, as can be learnt from the entire scope of his arguments addressed against the proceedings of the present Settlement Officers.

5. The entries are not to be mere agreements as put by Mr. Lyall for the term of settlement only, because the old settlements having expired there would have been no necessity to insert such a clause at this revised settlement. It is stated the entries "are to be deemed agreements within the meaning" of the section to which it is a rider; and that section says "any agreement between a landlord and tenant when such agreement is in writing or recorded by the proper officer in the record of a *regular* settlement sanctioned by Local Government." Any agreement then made was a *bonâ fide* one, and if it has been stated for instance in a wájib-ul-arz that so long as certain rates of rent were paid there was to be no evictions except for default, I presume such an agreement will now stand altogether so as not to be touched.

6. So, too, if it is declared in any clause that hereditary cultivators' tenures in that village was not transferable, I presume this entry now converted into an agreement can never be altered and there can be no alienation.

7. So, too, if it is declared that no tenants can sink wells or reclaim waste without consent of proprietor, Chapter VI of the Act will not apply.

8. I wish to know what interpretation is to be put on the word agreement as in the rider, because if the Court will have to decide on each case what term was contemplated, it would really not be able to do so, as in strict law the hereditary cultivators seldom signed the wájib-ul-arz, nor the khataunís. The general statement or schedule as Sir R. Temple refers to in his speech (meaning the khataunís) scarcely ever defined what were the terms of tenancy, or the exact meaning and privileges attaching to a tenure which was created, as Financial Commissioner himself can testify to for instance in Lahore District; so that it is not easy to discover how the understanding of the parties can be arrived at with any such precision as to partake of the force of agreements, such as the Act has now put upon such entries, if they have not signed such documents themselves.

9. At any rate the above occurs to me as the meaning of the Act. I wish to know whether I am wrong in the view I have taken.

Memorandum by Mr. Lyall.

1st.—In Chapter 1, Section 2, you interpret the words "a regular settlement sanctioned by the Local Government" to apply to the first regular settlement only, not to a revision of a regular settlement. I hold that revisions of regular settlement, like those now carried on in Lahore, Gujrát, &c., are regular settlements, and that when the Local Government has sanctioned them the clause will apply to agreements recorded in them.

2nd.—You consider that the effect of the rider to the same clause 2 will be that all the entries in respect of matters comprised in Chapters III, IV, V and VI in first settlement records will be held to be agreements binding the parties for ever. I do not see that this follows. The clause and rider merely say that such entries, which must always be of the nature of conditions or agreements, will be deemed to be agreements, and will not be effected, that is, not over-ruled, by the Act. But every agreement is for some term or for ever, and the Act will not alter the term where one is contemplated. The entries in former settlement records with respect to matters comprised in Chapter III (*i.e.*, with respect to rent) are in my opinion more commonly than not agreements for the term of settlement only. Where a cash rate of málikana was fixed by the Settlement Officer at last settlement, I think that the parties so understood the transaction, and that the Courts will so interpret it. Where the tenant is recorded to have paid cash without málikana or grain rates previously, and to be entitled to pay at same rates for the future, then I believe that the parties generally understood that the agreement was to be permanent, and that the Courts will hold so too. In short, I think the Courts will have to decide in each case what term was contemplated in the agreement. The entries in respect to matters comprised in the other chapters are entries with regard to matters of the nature of right or title, and could hardly have been intended to apply for the term of settlement only. I believe the Courts will so interpret them except in special cases. Such entries will always be more in accordance with the views of proprietors than the clauses of the Act in respect to the same matters.

No. 658, dated 12th December 1868.

From—E. A. Prinsep, Esquire, Settlement Commissioner, Punjab,

To—The Offg. Secretary to Financial Commissioner, Punjab.

I forward the enclosed copy of a letter No. 721, dated 4th instant, received from the Settlement Officer of Lahore, and would like to know the exact instructions I am to communicate to him.

2. Act XXVIII of 1868 is now *law*, under the notification made in *Punjab Gazette*, dated 5th November 1868.

3. This Act has rendered null and void every award or entry made in the new settlement records relating to the relations between proprietor and that class of tenants which was recorded at last settlement under the official term of "maurusi."

4. The only provisions in the Act affording any saving clauses are contained in the two rebuttals under Section 6, the exception in Section 13, and the last clause in the Act (Section 45).

5. The proceedings of the officers of the revised settlement have been deemed to be in accordance with law (Section 45) only where "such proceedings are consistent with the provisions of the Act." As it was impossible for these officers to know beforehand what these provisions were to be, it is clear that scarcely anything has been done that will stand, when gauged by the provisions of the new law, in respect of such matters as definitions of right of occupancy, fixation or enhancement of rent, and privileges or incidents attaching to these tenures.

6. The permission to enhance rent (Section 13) when a revision of settlement takes place is *general* and will not affect the question now under reference.

7. The principle laid down in 1st condition of Section 6, which allows the proprietor to disturb a right of occupancy when once simply registered on the records of a previous regular settlement, being quite new, and contrary even to general principles as laid down in Punjab Civil Code as to the way the Courts are to accept the fact of *lex loci*, whenever urged in claim or defence, it is manifest that the working of this provision can be *prospective* only.

8. The 2nd condition can be accepted as useful towards saving the new settlement entries, only when suit has been brought into Court by the proprietor. I presume this is intended by the Act, that all tenants previously recorded as "maurusi" are to revert to that position, as if there had been no revised settlement, here (*sic*) entries brought on the record on *admission* made before properly authorized officers are not to be deemed as such until there has been a suit in Court to prove the fact of such admission.

This being the case, it follows that the Act even as regards this section does not recognize the reliability of past operations in the settlement.

9. Thus, then, as regards our operations, the Act is wholly nugatory. It simply ignores all that has been done.

10. Then if we consider the meaning of the rider to Section 2 (as far as I am able to understand it) not only is every "maurusi" to revert to his old status as declared in the former record, but "*all entries*" regarding them referring to every point except that of the right of occupancy (Chapter II) which were "attested by the proper officer are to be deemed agreements within the meaning" of Section 2. That is, I understand, the Act is not to affect the operation of any such entries regarding everything except the actual right of occupancy, because now by this rider to Section 2 all entries are to have the force of agreements.

11. If this conclusion is correct, then it follows that as every entry in every record in every district previously settled has been attested (in a way) before a proper officer, and these entries are agreements under the new law, all that we have done in revised operations in the way of fixing and enhancing rent, of defining the exact privileges and incidents of tenure, of explaining the true relations subsisting between the two classes, as recognized by usages of the village, or as stated by both parties to be the true relations, has been set aside.

12. If this is the case, then all the thousands of copies of the Register of Field Abstracts (Khataunís) which have been distributed on the payment of fees to each land-owner and tenant as the deeds [of their mutual titles, must be held to be by this Act *invalid titles*.

13. As in these title deeds the nature and terms of tenancy awarded or declared at this settlement have been duly announced to the parties holding them, and who have paid fees for them, I presume it will be necessary now for the Settlement Officers to call on the title-holders to return them, that in so doing the parties at least may not be left in ignorance of the fact that they are no longer valid. If this is not done the continuance of these title deeds in their possession will only lead to great misapprehension and perhaps reasonable excuses hereafter. I wish to have explicit instructions, then, on this point as to whether these thousands upon thousands of title deeds are to be withdrawn, and, if so, whether it would not be just to cause restitution of the fees paid for the same, for the fees were charged on the understanding that the payer received in exchange *a true counterpart of rights and titles* as recorded in the new register.

The work of collecting these will be herculean, for probably in all seven districts there are not less than 100,000 which have been so distributed and payment taken.

14. Again, mere formal entries in the old records having thus been maintained right or wrong, and further having been strengthened till now they are deemed to have the force of *agreements*, it opens another question of the very greatest importance, which I must ask Financial Commissioner to instruct us upon, that is, what is to be considered as the position enjoined by the Act as regards *rent* and *incidents* of tenure wherever defined by the new settlement?

15. As these two features were everywhere disposed of in the new settlement enquiries at one and same time when declaring the exact status and class of tenant, and the result (*viz.*, the *rent* that was in future to be paid, and the rights and privileges that were to obtain) has been announced in these titles, and it is believed is being everywhere acted upon without murmur or objections in pursuance of those titles, if these titles are now ruled to be invalidated by the Act generally, and by Section 2 in particular, it further follows that the relations of the two classes in these two important aspects will be thrown into inextricable confusion, and, manifestly so, for these reasons:—

I.—Everything being deemed to have the force of *agreements* which were recorded in last settlement papers as regards fixation of rent or enhancement, and as many administration papers went so far as to say that if such and "such quotas of revenue or rent were paid they could not be enhanced during the period of settlement," or that so long as "such rates of rent were paid tenants of this class could not be evicted," and so forth, it becomes a certainty that every proprietor will now have to fall back on the terms of *those agreements altogether* and *for ever*, in spite of the tenants having at this settlement accepted the terms of rent and the amount of higher rents that have been everywhere imposed. This is a very serious dilemma which affects the value and stability of property, and, seeing that Government has taken in a larger number of villages, a considerable *initial* and *progressive* increase of revenue because of the increase of the value and productiveness of land, if the proprietors are not to have the power of enhancing rent because of these so-called agreements, how can they be called upon to bear the liabilities of increased taxation?

II.—If it be urged in reply that the Act itself allows of enhancement, and the conditions under which it can be taken, all that is needed is that there should be a suit in Court, then why is Chapter III included in the rider to Section 2 as being one of the matters which, when once attested by a proper officer at a former settlement, is to have the force of a *bonâ fide* agreement, of which the first part of the section says the Act is not to affect the operation?

III.—It cannot be said that this means that the agreement is to have force only till a new settlement is made, because there was no such stipulation as between the parties, for the Act overrides *their* intentions or wishes altogether. They were parties to a mere formal entry, and not being parties to this title of agreement acquired by the framing of a new law, it cannot be held that we can compare them with agreements voluntarily entered into, which were entered as agreements at last settlement. In the one case the terms of the agreement were recorded, in the other none were ever made. They merely recorded a fact in a register. The law has turned that fact into an agreement, and given it the same force of regular agreements which had conditions recorded, and by the parties *per se.*

IV.—So too as regards incidents of tenure. At last settlement it was generally recorded in administration papers that "maurusís" did not hold a *transferable* tenure, and unconditionally they could neither sell nor mortgage. Chapter V, Sections 34, 35, now says they *can* do so under a condition. This Chapter V is one of the matters regarding which entries of former settlement record are deemed to have the force of agreements; consequently the law here cuts the other way, and makes, as far as I am able to judge, one part of the Act inoperative as regards another part, and in this case in favor of the proprietors. If these interpretations put in leading sections of the Act have been correctly formed, I leave Financial Commissioner to judge how exceedingly difficult it is for us to understand the true way of working the new law.

16. What I come to in conclusion is this: if the position of this question is left in the various ways put to the Financial Commissioner in the preceding paragraphs, it is most urgently necessary that full instructions be sent for our guidance as to what steps are now to be taken by Settlement Officers in the matter of revising the work of the past, or as regards future procedure.

17. I am of opinion that if it is ruled that everything reverts to what it was in the old settlement records, no time should be lost to communicate information of such momentous consequences to both parties whose interests are vitally at stake. This should be done by causing an authentic translation of the Act into Urdu and Punjabi, and its distribution to the people, also to the Courts presided over by Native Judicial Officers. Even the work of translation will be no easy task, if it is to be put into such forms as to be really intelligible to the ordinary reader.

18. Then, too, I am of opinion it is of the first importance that the Settlement Officer himself should take opportunities of holding assemblies, say one in each parganah, of large numbers of *both* classes, and, after verbally explaining to them the requirements of the new law, distribute vernacular copies of the Act to such leading men of both classes who may wish to have them.

19. By doing this the public mind will learn once for all how the matter stands, what the law has done, and how the law will work, and knowing this we shall not be required to tell the tenants that they need not go to the expense of petitioning for restoration to the old status, as this prayer is allowed by the new law to all of them.

20. If this is objected to, if Settlement Officers are to take such petitions, then I do not quite understand what they are to do. I mean such petitions as merely require restoration of status by the tenants. In telling the tenants the law has restored their status it will be necessary also to tell them that that restoration is not absolute; the status is not an indefeasible title, as it is for instance in North-Western Provinces. It is merely a *presumption* that they

have a right, and proprietors can rebut this if they like. It is merely a paper protection dependent entirely on the fact whether the proprietors will sue or not. That in fact Section 6 merely makes a man a *kutcha maurusi*, but that if he wants to be absolute (*pucca maurusi*) the onus of proof falls on him to show that his case answers one of the fair definitions in Section 5, or that he can prove a right "on any other grounds" as in Section 8. The very announcement of such to the bewildered tenant will have the effect either of stirring up immediate strife, or it will send him away unfit to make a stand against the proprietor, or he will go to his home leaving the matter of the true relations *as undefined as ever*.

21. Now what I wish to know is this: are Settlement Officers to go into the question of right where petitions are presented by a *tenant for restoration to status only*, or to inform the tenant the law gives him a *reduced status* compared with last settlement entry, leaving it to him to claim the higher absolute status, or to the proprietor to sue a denial, each from their own knowledge? Of course if the proprietor sues under Section 6, the duty of Settlement Officer is clear: he takes up the case on its own merits judicially, like any other regular suit. I ask the question as it is evidently the intention of the Act to throw the onus of every suit as to the fact of the old status in the record on the proprietor, and not on the tenant; yet most of the petitions that will now be given in, if there is no announcement in a general way at public meetings held for this purpose, will be brought by the tenants, the very class the Act seeks to protect, and naturally *they* ought not to be put to any expense.

22. If, on the other hand, Settlement Officer is not only to take the tenant's petition, but to try his title to the higher status judicially, then there will be a very full and continuous flow of litigation; the Courts will be flooded; the cases will be exceedingly intricate to investigate, for every case must become, under the terms of the Act, a suit in Court; heated evidence will be brought on both sides; custom and power of eviction recognized by custom will have to be proved by bringing into Court cases of eviction that have occurred in different places and for several years sufficient to prove the custom, and this in each case. Consequently it is reasonable to conclude the time taken in investigations and weighing of such heated evidence will always be great. All this comes upon us, as remarked by Mr. Saunders, just as settlement operations are about to close. I am therefore constrained to enquire whether in such districts as Lahore and Kángra, where the settlement operations are now closing, this vast increase of judicial work is to be undertaken by the Settlement Courts or by ordinary Civil Courts of the districts.

23. As it is, I foresee that it may become necessary for Government to appoint a separate Special Court for the hearing of such suits, at any rate for the next two or three years, in every district, whether brought under revised settlement or not,—simply not because they will have to sit in judgment on the awards of Settlement Judicial Officers, but the Officers selected to preside in such Courts must have great experience in revenue concerns, and the ways of the rural classes,—before we can ever expect careful and proper decisions to be given merely on so much evidence produced in these Courts on both sides at a time when (as this is not improbable) the whole country may be in a state of irritation about the litigation engendered.

24. If all this new judicial work is to be imposed on us, it will prolong the settlement and increase the cost of settlements. In other respects it may be unadvisable to allow "Punjab Settlement Officers" to try such suits if all that has been said by Honorable Members in Council is to be left on the proceedings of Government unnoticed, undenied, or unrefuted. I submit that after the severe animadversions passed on the officers of this Department they may reasonably be excused if they hesitate to take up this new judicial work. If their proceedings are spoken of once with such scant courtesy, they may yet again be held up to derision for trying this class of suits judicially, unless

some administrative protection is afforded as a guarantee for the legality of their proceedings and their fitness to be Judges of such Courts.

25. I request the favor of *early* and explicit instructions on all these points, that we may feel we are safe in the procedure which is now to be adopted.

No. 791, dated 4th December 1868.

From—The Settlement Officer, Lahore,

To—The Settlement Commissioner, Punjab.

I HAVE no request your instructions whether Settlement Courts of this district are to take cognizance of cases now instituted under Act XXVIII of 1868, Punjab Tenancy Act.

2. Already upwards of one hundred suits have been presented, and if the Settlement Courts are to take up these intricate cases at the fag-end of the settlement, there seems a remote chance of the settlement being brought to a close within the next few months, for I anticipate that almost every tenant who has had his status investigated in a summary way at this settlement will now wish to have his case re-opened.

3. But after a careful study of the Act it appears to me that, except on the subject of rent, there exists no necessity for these cases to be heard and determined; for it appears to me that under Section 45 of the Act all our summary enquiries are actually rendered null and void, and these petitions are not for rent but for a re-entry in the present settlement records of their occupancy rights. It would appear sufficient to note on the petitions that their prayer has been complied with by the publication of the Punjab Tenancy Act itself, except in those cases in which, under Section 2, a decree of Court has been passed, or, under Section 45, where the proceedings have been consistent with the provisions of the Act.

4. All petitions presented I have received, and, not knowing what action I ought to take, I have warned the parties to attend again after fifteen days, by which time I hope to be favored with orders on this subject.

No. 1014, dated 23rd March 1869.

From—E. A. PRINSEP, Esquire, Settlement Commissioner, Punjab,

To—The Secretary to Financial Commissioner, Punjab.

As I do not clearly understand the instructions given in your No. 1508, dated 13th instant, regarding the extent to which revision of tenant entries in the new records is to be carried out, and it is possible that we may further misinterpret the requirements of the Act, I deem it to be absolutely necessary to request you to move Financial Commissioner to lay down in one memo. of instructions for the guidance of myself and my officers what particular action we are to take, and what we are not required to do, regarding *all* the sections of the Act which appear to me to affect our operations, *viz.*, Chapter II, Section 2 and its rider, Sections 11 and 12, Sections 32, 34, 35, 36, Chapter VI, when taken together, and compared with Section 45, which bears upon the legality of our proceedings.

2. It would save a great deal of reference, and prevent the possibility of misconception and risk of going over the ground twice if one set of rules could be explicitly and finally drawn out. We can then faithfully carry them out, and be free from all further responsibility.

3. I am obliged to ask for this, for I confess I do not read the Act as affecting our recorded operations in the way that it is put in your letter under acknowledgment.

4. You say that only those tenants should be classified—

(1). Who have brought a suit against their landlords, or have been sued by them on account of status;

(2). Whose right of occupancy recorded at the former settlement has been confirmed at the revised settlement.

In other words, only those holdings the recorded status of which has in the revised settlement been *upheld* by a decree in a contested suit, by an award of pancháyat, or by an award of Superintendent, or by admission on part of landowner.

This does not agree even with paragraphs 4 and 5 of the printed letter No. 898, dated 1st December, to which you refer. In paragraph 4 you will perceive the orders are clearly *twofold*,—(1) to revise *all* "records of the above settlement relating to the status of tenants, in accordance with the provisions of *Section* 6; (2) to classify tenants, having, or presumed to have, a right of occupancy into the several classes described in Sections 5 *and* 6 *of the Act*." It will be seen there is special allusion here to Section 6 twice made.

5. So, too, paragraph 5 is more explicit, for it suggests the *modus operandi* regarding (1) "ALL entries affecting the status of tenants recorded *at variance with the record of the preceding settlement*; and (2) making a fresh entry in red ink as to whether the status is really that of an *absolute* or presumptive right of occupancy under both Sections 5 *and* 6." Again, further on, we are instructed to give printed notice, to both tenant and proprietor, and "in the case of *occupancy tenants under Section* 6" to see that further specifications are entered in such notice.

6. It is clear from this that the printed instructions, as they stand, require us to revise ALL *entries*, not only so as to elicit such as correspond to the four classes under Section 5, but also those of Section 6 class whose status has been altered by the proceedings of revised settlement.

7. So that although there may be no actual classification necessary of tenants whose status was lowered and who are now to be restored to their former position as having a presumptive right of occupancy, still I presume all these entries have to be reviewed, and the records to be revised, so as to restore all who have not sued before, or who do not sue during these operations, to the *presumptive status secured to them by Section* 6.

8. Then you say that when the presumptive right of a tenant has been confirmed after a suit the status should be classified under Section 5 *if it* comes under any of the definitions of that section. But suppose the features of the tenure, as established by decision, do not answer to any one of the classes, what is to be done then? The law provides for only five classes, the four kinds under Section 5, and where the absolute right is not proved those of Section 6 merely *presumptive*. I am not putting a purely suppositious position. Numerous decisions will turn up which do not show any tenure corresponding with the four classes of Section 5; for example—

A.—Occupants of less than three, many less than two, generations who have paid rent, even since last settlement.

B.—Tenants of non-resident class, who have cultivated in periods short of their lifetime, yet have paid no rent. There is no devolution here.

C.—Tenants who are "Kamíns" and have rendered service, yet received decree for some reason not recognized by the Act.

D.—Tenants who cleared the land and have held for several years, and yet have regularly paid rent since last settlement. And many more I could mention.

Though these tenures, presumptive under the Act, have been confirmed after a suit, it will be seen none of these citations will bring them under any of the classes of Section 5. If they do not come under any one of them, how are they to be classified?

9. The same remarks will apply to such instances,—and they will be found more numerous,—where the former right of occupancy has been affirmed by agreement or admission on part of landowners. It will be remembered that out of the 15,000 occupancy tenants in entire Amritsar Division which were upheld, 4,000 only represented the result of new suits at revised settlement, 11,000 were accepted and continued without dispute. The chief features in these tenures which led to their being upheld were that they were held by village servants in small lots of two or three acres in lieu of rations, or the lands were attached to religious places. In both cases rent would ordinarily be excused; yet many of them may have been given in grants for periods short of two lives, in which case they will not come under Class 1 or Class 3 of Section 5, and yet they were upheld according to village custom.

The law pays no regard to village custom, so that here too it will be a question where we are to class these so that they may be *absolute* under the law.

10. It appears to me that Financial Commissioner has overlooked the requirements of Section 2, and particularly the rider to this section. The Act is explicit in these sections that it is *not* to operate in cases of decrees of Court, or where there are agreements between landlord and tenant.

11. So, too, as regards other matters provided for by the rider to Section 2, *viz.*, eviction, enhancement, alienation and improvement (Chapters III, IV, V and VI), the entries in our new records in no way agree with what this Section 2 requires. It is said that *all* entries of a former record, if attested by a proper officer, are to be considered to be *agreements*, and the Act is not to apply. This being the case, it appears to me a very large number of holdings will require alteration in the matters treated of in these four chapters, so as to restore them to the position of an agreement legalized under rider to Section 2, to wit:—

X.—If in a *wájib-ul-arz* of former settlement and hereditary tenant is stated to pay at fixed rates, and these have been enhanced at this settlement on some principle not agreeing with sections 11 and 12.

Y.—If in some record a tenant of a similar class is stated to have no power to sell or mortgage, and this tenant has by suit at the revised settlement been confirmed in his occupancy right, if he is classed under Section 5, he will be wrongly classed, as by Section 2 (the rider) by law he is now held to have made an agreement which cannot be altered, and so the incidents of his tenure will not come under the operation of the Act.

Z.—If in some record a tenant of similar class is stated to have no power to sink a well or reclaim waste land, he cannot have any of the privileges allowed under Chapter VI.

12. Thus it will be seen that a close scrutiny of every holding must be made, not only with a view to classification under Sections 5 and 6, but under other sections of the Act, which I have detailed in first paragraph. Comparison with the former records as well as with the files of recorded suits and with all the sections of the Act more or less is inevitable. However, if I am in error in these conclusions, and Financial Commissioner will issue a full memo. of instructions, they shall be attended to. But it occurs to me it may be found necessary to withdraw or alter parts of the printed letter which has been previously issued or further misunderstandings and references may result.

No. 2315, dated 21st April 1869.

From—J. A. E. Miller, Esquire, Secretary to Financial Commissioner, Punjab,
To—The Settlement Commissioner, Punjab.

With reference to his No. 658 of the 12th December 1868, and No. 1014 of 23rd March 1869, forwards, for guidance, a copy of a memorandum recorded by Mr. Egerton on the Punjab Tenancy Act.

Memo. by R. Egerton, Esquire, Financial Commissioner, Punjab, dated 1st April 1869.

With reference to Settlement Commissioner's letters No 658, dated 12th December 1868, and No. 1014, dated 23rd March 1869, on the subject of the Punjab Tenancy Act of 1868, it is necessary to define the course which the officers of the Settlement Department are to pursue in regard to the records of the district which have come under revision of settlement.

And first, in regard to rights of occupancy. In letter No. 898, dated 1st December 1868, paragraphs 3, 4 and 5, the mode in which the entries relating to rights of occupancy in the new records of the revised settlement are to be awarded is set forth.

2. All entries by which the status of a cultivator recorded at the former settlement as (maurusi) or by right of occupancy has been lowered must be revised. In cases where, either from the entries in the former records, or by decrees of Court made at first settlement or subsequently, the tenant is shown to belong to any of the classes specified in Section 5 of the Act, he will be entered under one of the four classes of that section. Tenants whose recorded right of occupancy has been confirmed at the revised settlement will be similarly classified under one or other of the four classes of Section 5 if the circumstances of his tenure admit of its being so classified.

All tenures which do not come under one or other of the four classes must be entered under Section 6. This rule applies also to rights of occupancy acquired under Section 8. Section 6 of the Act states that tenants who hold under this section have a presumptive right of occupancy, but when the presumption is not rebutted a right of occupancy remains.

No petitions for correction of the new record are necessary. The entries will be amended by the Settlement Department in the manner indicated above without petition.

3. Any tenant recorded as having a right of occupancy under Section 6 may sue to be recorded as holding a higher status under one of the classes of Section 5, and landlords may sue to rebut the presumption arising from the entry in the former settlement record regarding a right of occupancy; but until such suits are brought the status of a tenant recorded as possessing right of occupancy in the former settlement record will be that described in Section 6.

The proceedings of Settlement Officers in depriving of the right of occupancy persons who were recorded as possessing such a right in the common lands of a pattidári village will be legal under the second clause of Section 9, and will probably not require revision under these orders.

It is to be remembered that the provisions of Chapter 2 of the Act do not apply to decrees and written agreements, nor to agreements recorded in the records of a former regular settlement sanctioned by the Local Government. The distinction between agreements recorded in the records of a regular settlement and mere entries in such former record is to be attended to. An agreement recorded by the proper officer in the record of a regular settlement will not be affected in its operation by the provisions of Chapter 2, but a mere entry in such record will not have this effect, and it will be for the Courts to determine as cases arise what is to be considered an agreement recorded by the proper officer in the records of a regular settlement sanctioned by the Local Government.

4. Regarding matters comprised in Chapters III, IV, V and VI of the Act, it is to be observed that under Section 2 the provisions of the Act do not apply to decrees, to agreements in writing, to agreements recorded by the proper officer in the records of a regular settlement sanctioned by the Local Government, and to entries in such record when attested by the proper officer.

Now, agreements are either for a period, or for ever. Agreements regarding rent appear from the very nature of them to be of a temporary character under a temporary settlement. Unless, therefore, there is something expressly to the contrary in the record, the enhancement of rent at revision of settlement appears perfectly legitimate, and the proceedings of Settlement Officers for enhancing the rent of tenants possessing a right of occupancy appear to be rendered legal by Section 45 of the Act, if such enhancement has not exceeded the limits prescribed in the first part of Chapter III: where the prescribed limits have been exceeded the proceedings must be revised.

5. The rights comprised in Chapters IV, V and VI seem to me of a permanent kind, and not such as are from the nature of them liable to revision at revision of settlement. In districts therefore where a regular settlement previously sanctioned by the Local Government has been made, the entries in the settlement record will, under Section 2, not be liable to revision, and alterations which have been made regarding these rights must be cancelled. All matters comprised in Chapters IV, V and VI will be governed therefore either by decrees, agreements, or entries in the former settlement records, or by the Tenancy Act where there is no entry regarding them in the former record.

6. The term "proper officer" used in Section 2 of the Act must be held to apply to an officer holding judicial powers, and not to a mere ministerial officer.

No. 1344, dated 22nd November 1869.

From—T. H. THORNTON, Esquire, Secretary to Government, Punjab,

To—The Secretary to Financial Commissioner, Punjab.

I AM directed to acknowledge your letter No. 870, dated 3rd instant, and its enclosures, regarding revision of tenant entries in accordance with the Tenancy Act; and to convey the Hon'ble the Lieutenant-Governor's approval of the Financial Commissioner's suggestions. The rules appear to His Honor to have been drawn up with much care, and he trusts they will fully answer the purpose intended.

No. 247, dated Camp Bungah, 27th January 1870.

From—E. A. PRINSEP, Esquire, Settlement Commissioner, Punjab,

To—The Secretary to Financial Commissioner, Punjab.

I HAVE delayed replying to your No. 7260 of 9th December last, as, having heard of the arrival at Calcutta of the Duke of Argyll's decision on the tenancy question, before I could finally express my wishes, I was particularly anxious to peruse the precise nature of the orders as received from England.

2. Having now had an opportunity of perusing not only the despatch but the order of the Government of India to the Punjab Government in the *Gazette of India*, I am better able to convey to you my own views on the question you refer.

3. It appears to me that the whole of the instructions contained in your No. 870 of 3rd November embodying the *modus operandi* for effecting the revisions will now need reconsideration.

4. In the Government of India letter No. 20 R., dated 14th January, conveying instructions to Punjab Government on the despatch, nothing has been said as to the necessity of any actual revision of the records of the revenue settlement

Facilities are to be afforded "to ALL classes whose rights in the land may be affected, if dissatisfied, to prove by a regular suit that those rights are *more correctly recorded in the revised settlement than in the first.*" This would afford room for the inference that, though entries relating to status, usage, powers and privileges as in revised settlement cannot be accepted as having authority, yet that so far they may stand *quantum valeat* until rectified by either party by a regular suit.

5. The Secretary of State's instructions taken as a whole would further confirm this view.

6. In paragraph 18 he says, "if the Act had the effect of absolutely stereotyping the first settlement and rendering all its mistakes permanent and irreversible, he (the Secretary of State) would "entertain very strong objections to it." Further on "the Act provides for the rectification of ALL *errors.*" Again, in paragraph 19 "this was the object of the Act" when introduced by Mr. Brandreth, and this opinion is clearly expressed by His Grace when he says further on in this paragraph "nor does it seem to have been contemplated that Mr. Prinsep's revision of the old settlement should be ignored, or his labor considered "as thrown away." Again, in paragraph 20, and "if your Government conducts its operations in *this spirit*" (observe the word) "a satisfactory solution of all difficulties may be attained."

7. When the above are considered with the latter part of paragraph 23, where His Grace further remarks "that it is our duty to ascertain, as nearly as we can, what the relative rights and relations of land-owners and land-occupiers actually were *before we took the country*, to give to those rights and relations a new sanction and not to upset or interfere with them," and pass on to the favorable view His Grace has taken as to my method of operation insomuch as he is pleased to express his opinion that "this method appeared to him to have been at least carefully and conscientiously devised, and that he cannot doubt" that many of the results arrived at by me "will, on judicial investigation, be found to be correct," I venture to hope that some steps will now be taken not to throw aside the result of our labours, but to let them stand '*quantum valeat.*'

8. I am of opinion in doing so no order of the Secretary of State is contravened; on the contrary, we shall only be acting in accordance with his view of the matter as it stands.

9. It would be quite enough to inform administrative officers and the Civil Courts that "the Act is not disallowed," but is to be put in operation. The new records, wherever they differ from the old in relation to such matters as are compassed by the Act, may stand *quantum valeat*, but they are not to be received as authoritative unless—

(*a*) the entries are covered by agreement or decree of Court ;

(*b*) or are shown to be valid by decision given in regular suit subsequent to revised settlement, by either party;

and until these conditions are shown to have been fulfilled the *old records* are to be deemed presumably the correct records of status and tenant relations.

10. Then as to the extracts from the revised settlement records given as title deeds to each proprietor and tenant previously recorded as an hereditary cultivator, these should be declared to be *invalid* by beat of drum in every village as regards status, terms of occupancy, privileges and powers until the proprietor come into Court and prove by a regular suit that "the rights as recorded in these title deeds were more correctly entered in the revised than in the first settlement."

11. In this way the instructions of the Duke of Argyll would be strictly carried out, the necessity of elaborate operations of no avail all over the country would be obviated, and the Act would come into operation unfettered by the

entries of the new records until they were proved to be in reality correct, and a great deal of public agitation and excitement may be avoided.

12. If, on the other hand, the plan sketched out by Financial Commissioner is put into effect, I fear the excitement and direct encouragement given to litigation will be great, and very alarming in its consequences. Besides, I apprehend the worst results from any such manipulation of valuable records. The Tahsíldárs and Patwárís have already more work than they can pay proper attention to. The latter, with the Kánúngos, represent, in five districts of Gurdáspur, Amritsar, Lahore, Siálkot and Gujránwála, an agency of nearly 1,200 men, and into their hands is to be entrusted revision of my valuable records, and an interpretation of certain parts of the Act, which it is hopeless to expect they will efficiently carry out in the way laid down. Conceive, too, some 1,100 Patwárís let loose all over the country to tell "all classes" "that it is open to them to lodge a petition in the Revenue Court if they do not approve of their (the Patwárís') mode of correcting these innumerable entries, bearing on the most cherished relations of agricultural life." Knowing as we do how these are the very men whom the agricultural classes look upon as having already too much power, how it is the common complaint that nearly in every second case regarding land that comes ordinarily into the Court the parties are worked up to a pitch of contention by these very Patwárís, I have no hesitation in saying that the result of the plan will simply be to flood our Courts with cases. The litigation and public irritation that will result will be something that one shudders to think of.

13. If then this can be avoided, I think it is wiser and better that the alternative plan above put forward, and which *is in accordance with the terms of the despatch*, should be put into effect preferably.

14. Mixing as I do every day of my life with these people, it is my duty to report what I fear. If, however, it is ruled that the entries must be revised in detail in the way laid down by Financial Commissioner, then we must all do our best to give it a helping hand, be the consequences what they may.

15. And now as regards whether this work of revision, if it must be carried out, should be done under my supervision or be left to the District authorities, I am willing to lay aside my own wishes for whatever is considered to be for the public weal. I think for the first few months it would have been better for me to watch and guide the earlier operations until they had been carefully and uniformly started. I should be able to bring to notice matters of importance uncertainly understood as bearing on the terms of the Act to help officers who had not studied the Act so as to know thoroughly what its effect would be on the work of revision, and to help the rural classes representing both interests in their endeavours to understand what the Act gave them or withheld from them and what steps were to be pursued in accordance with provisions of the Act, which are far from easy to comprehend, so that they might set themselves right for the future.

16. I say this the more deliberately when I remember how some 30,000 mutations in Amritsar Division, which had actually come into effect after the *last* settlement, had never been brought to the record from the *insouciance* of Tahsíldárs, Kánúngos and Patwárís, because District Officers had already their attention taken up with heavy current work—some of them are not well acquainted with the precise bearings of the entries as made in settlement records; further because not long ago in one district long after the passing of the Act I heard one Deputy Commissioner constantly give out that "the new law restored everything as it was before," and so far he was right; but he never pointed out or made it at all known, and to this day it is not known in his district, that, though the old records are deemed presumably correct, any one aggrieved can still bring his suit to prove his new title to be correct; and here he was wrong, for he withheld from the people what was the chief effect of the new legislation.

17. When I remember these facts, I naturally am reluctant to express any desire to see the supervision pass out of my hands, but I leave the matter

entirely in the hands of His Honor the Lieutenant-Governor and will be most ready to attend to his wishes.

18. With this object, I beg you will move Financial Commissioner to place these my views for the favorable consideration of His Honor the Lieutenant-Governor.

No. 87, dated 3rd February 1870.

From—J. A. E. MILLER, Esquire, Secretary to Financial Commissioner, Punjab,
To—The Secretary to Government, Punjab.

IN continuation of my letter No. 60, dated 22nd ultimo, I am directed to forward, for the orders of Government, a letter in original from the Commissioner, No. 247, dated 27th idem.

2. In this letter Mr. Prinsep proposes that in lieu of the revision of his settlement records suggested in my No. 870, dated 3rd November 1869, and sanctioned in your reply No. 1344 of the 22nd idem, those records should remain untouched until their incorrectness had been proved by a suit in Court, but that they should not be held to be of any authority. To use Mr. Prinsep's own words as given in paragraph 9 of his letter, "it would be quite enough to inform administrative officers and the Civil Courts that the Act is not disallowed," but is to be put in operation. The new records, wherever they differ from the old in relation to such matters as are compassed by the Act, may stand *quantum valeat*, but they are not to be received as authoritative unless—

(*a*) the entries are covered by agreement or decree of Court;

(*b*) or are shown to be valid by decision given in regular suit subsequent to revised settlement by either party:

and until these conditions are shown to have been fulfilled the *old records* are to be deemed presumably the correct records of status and tenant relations.

3. The Settlement Commissioner considers that this procedure would be in conformity with the despatch of the Secretary of State, No. 80, dated 28th October 1869, and he has quoted portions of the desptach in support of this opinion.

4. Without following the Settlement Commissioner in the reasons he gives for his view of the Duke of Argyll's despatch, the Officiating Financial Commissioner would observe that the Punjab Tenancy Act is law, and that by Section 6 of the Act the entries of occupancy rights in the first settlement record are presumably correct, and are absolutely so unless rebutt ed; and that duly attested entries in the first settlement regarding matters comprised in Chapters III, IV, V and VI of the Act are not affected by the operation of the Act (Section 2). The effect of the Act is thus stated in paragraph 15 of His Grace's despatch :—"The first great leading feature of the measure is that it sets up, as presumably correct, the first regular settlement of the Province, thereby setting aside, as of authority, the records of right contained in the revised settlement which was being conducted by Mr. Prinsep and his officers." And it appears to Mr. Melvill that this is the result contemplated throughout the despatch, and that there is nothing in it which would justify the Government in refraining from correcting the revised settlement records in accordance with the law. It would be paradoxical to accept as the record of landed rights a register which is declared by law to be *primâ facie* incorrect, and therefore there would seem to be no alternative but to effect the revision as proposed by the Officiating Financial Commissioner in my letter No. 870 above cited.

5. Mr. Prinsep expresses a conviction that the revision of his records, besides being hazardous, will stir up strife and litigation. Should this be the result, no one will regret it more than Mr. Melvill, whose earnest desire throughout has been to give effect to the intentions of the Legislature in the way most likely to avoid difficulty and litigation, and he believes that the plan he proposed is the best that can be devised to this end. He does not think that the negative course suggested by Mr. Prinsep would be understood by the people, while there would be the certainty of great confusion in the record of landed rights.

No. 103, dated 4th February 1870.

From—T. H. THORNTON, Esquire, Secretary to Government, Punjab,

To—The Secretary to Financial Commissioner, Punjab.

I AM desired to acknowledge the receipt of your letters No. 60, dated 22nd ultimo, and No. 87, dated 3rd instant, and their respective enclosures (herewith returned), having reference to the revision of records necessary in connexion with Section 45 of the Punjab Tenancy Act.

2. In reply, I am desired to observe that the Hon'ble the Lieutenant-Governor entirely concurs in the views expressed by the Financial Commissioner. It is, His Honor considers, the bounden duty of the Government to amend the entries in the record of the settlements effected by Mr. Prinsep, which have been made invalid by Section 45, not only because the adoption of any other course will lead to a vast amount of unnecessary litigation, but because the revision has been expressly ordered by the Government of India in their letter No. 356, dated 7th November 1868. As observed by the Financial Commissioner, there is nothing in the despatch of the Secretary of State which would justify this Government in refraining from correcting the revised settlement records according to law: on the contrary, the whole tenor of the despatch contemplates that the records of the first settlement shall be held to be presumably correct, and that the records of right contained in the revised settlements of Mr. Prinsep shall be set aside as of no authority until their correctness is proved judicially.

3. His Honor will not consider in further detail the various arguments used by Mr. Prinsep in his letter No. 247, dated 27th January, against the proposed revision of records. It will suffice to say that most of them appear inadmissible, and that His Honor has no reason to modify the orders already passed.

4. * * * The task of rectification should, His Honor thinks, be entrusted to a selected Extra Assistant Commissioner of the ordinary administrative staff, and he is of opinion that the following officers should be so employed, and made responsible for having the work efficiently and correctly performed, acting, of course, under the orders of their respective Deputy Commissioners and Commissioners:—

Amritsar ...	... Agha Kalbabid.
Gurdáspur ...	... Qaim Ali.
Siálkot ...	... Wazír Ali.
Lahore ...	... Ghulám Nabi Khán.
Gujránwála ...	... Fakír Zahúr-ud-dín.

5. These officers will be guided by the instructions contained in my letter No. 1196, dated 6th October last, and in your letter No. 870, dated 3rd November, provided of course that in cases where the entry in Mr. Prinsep's settlement record is in accordance with a decree of Court, or an agreement of the nature described in Section 2 of the Act, the old record is not to be reverted to, but the new record maintained.

6. It will probably be advisable, pending the revision of records, to suspend the hearing of all suits for the amendment of the record affecting the status of tenants in the districts recently settled.

No. 1683, dated 24th March 1870.

From—J. A. E. MILLER, Esquire, Secretary to Financial Commissioner, Punjab,

To—The Commissioner and Superintendent, Lahore Division.

I AM directed to forward herewith 6 copies of rules for carrying into effect the Punjab Tenancy Act, and, with reference to Rule 4, to inform you that

the Government has appointed Munshi Ghulám Nabi, Extra Assistant Commissioner, to be the revising officer for Lahore, and Fakír Zahúr-ud-dín, Extra Assistant Commissioner, for Gujránwála. These officers should be relieved as far as possible of all other work and instructed to devote themselves to the work of revision of tenant entries in accordance with these rules, of which 500 copies of the vernacular translation will also be forwarded for their guidance and for distribution to Patwárís and others.

No. 1684, dated 24th March 1870.

From—J. A. E. Miller, Esquire, Secretary to Financial Commissioner, Punjab,

To—The Commissioner and Superintendent, Amritsar Division.

I am directed to forward herewith 8 copies of rules for carrying into effect the Punjab Tenancy Act, and, with reference to Rule 4, to inform you that the Government has appointed Agha Kalbabid, Extra Assistant Commissioner, to be the revising officer for Amritsar, Wazír Ali, Extra Assistant Commissioner, for Siálkot, and Qaim Ali, Extra Assistant Commissioner, for Gurdáspur. These officers should be relieved as far as possible of all other work and instructed to devote themselves to the work of revision of tenant entries in accordance with these rules, of which 500 copies of the vernacular translation will also be forwarded for their guidance and for distribution to Patwárís and others.

Rules for carrying into effect the Punjab Tenancy Act, XXVIII of 1868, *in districts recently settled.*

The Punjab Tenancy Act is in force in all districts, and claims instituted under it will be disposed of by the ordinary Civil Courts, except in districts where the jurisdiction of the Revenue Courts, described in Section 21, Act XIX of 1865, has been continued or revived *quoad* cases under this Act, and districts where settlement operations are in progress.

2. The effect of the Act, and of the orders of Government issued in connection therewith, is that, as regards the rights of tenants, the records of the first settlement are presumably correct. The records of the recent settlements in the districts of Amritsar, Siálkot, Gurdáspur, Lahore and Gujránwála must therefore be revised.

3. This revision is ordered by Government as an administrative matter. It is therefore not necessary to wait for tenants to petition for restoration to their former status. It should be made generally known that no such petitions are required, and that the entries of the record of the first settlement will be restored without them.

4. The settlement establishments having been withdrawn from the above districts, it has been determined by Government that the work of revision shall be carried out under the superintendence of selected Native Extra Assistant Commissioners, of whom one has been appointed for each district.

5. As regards occupancy rights (Chapter II of the Act), the duty of these officers will be to revise the entries made in the recent settlements, to erase the invalid entries in red ink, and to make in each case a fresh entry in red ink, stating that the tenant has a presumptive right of occupancy under Section 6 of the Act, and to inform the parties interested, leaving it to the proprietor to take the necessary measures for rebutting the presumption of occupancy rights, should he think fit to do so, and to the tenant to take the necessary measures for obtaining an authoritative declaration of his *precise* status as a tenant, *viz.*, whether he belongs to class (1), (2), (3) or (4) of Section 5, or to the classes described in Section 6 or 8.

6. The revising officers must not undertake the work of *classification* of tenants *proprio motu.*

7. Entries relating to the matters treated of in Section 16 of Chapter 3, and in Chapters 4, 5 and 6 of the Act, *viz.*, commutation of rent, ejectment, relinquishment, leases, alienation and succession, and compensation for tenants' improvements, are also affected by the terms of the Act and of the Government orders, and, strictly speaking, should be revised in the same way as the entries affecting occupancy; but it has been determined by Government that it will be sufficient to record on each settlement misl in red ink, under the signature of the Extra Assistant Commissioner, both in the Government copy (or copies) and in the Patwárís' copy, an entry to the following effect:—

"Nothing in this misl which relates to the subjects treated of in Section 16 of Chapter 3, or in Chapters 4, 5 and 6 of the Punjab Tenancy Act shall be considered valid if opposed to the entries made in the first regular settlement, unless it is supported by an agreement or a decree of Court, or is valid under Section 45 of the Act."

8. With regard to Sections 10 to 15 of Chapter III, treating of "rent," it mustbe noted that, as the rates of rent of tenants with right of occupancy were fixed at the first settlement for the term of settlement only, and were therefore liable to revision when the assessment was revised, the enhanced rates of rent imposed at the revised settlement are protected by Section 45 of the Act, and are not to be altered without a decree.

9. In cases where the entry in the recent settlement is in accordance with a decree of Court or an agreement in writing between the parties of the nature described in Section 2 of the Act, no correction of the new record is to be made.

10. The correction of the entries of status of cultivators and the insertion of the general note in the Patwári's copy of the settlement misl should be made simultaneously with the correction of the Government copy (or copies), and each revised entry should be signed by the Extra Assistant Commissioner.

11. The above procedure will provide for the correction of the official records of the settlement. But provision must also be made for the correction of the title deeds in the hands of the cultivators and their landlords.

12. The correction both of the official records and of the extracts in the hands of the people should be effected according to Patwárís' circles of villages.

Each Patwári must collect the extracts from settlement records held by cultivators and their landlords, and must bring them with him to the Court of the revising officer (Extra Assistant Commissioner). They will there be altered in accordance with the alterations made in the settlement records; the alterations will be attested and signed by the Exra Assistant Commissioner, or by his responsible subordinate, the Kánúngo, acting immediately under his orders, and will be restored to the parties under the orders of the Extra Assistant Commissioner.

13. No fee is to be charged for these alterations of extracts under any pretence whatever.

14. Any document supplied to the people by the settlement authorities, whether an extract of the above nature or an extract from other parts of the settlement record, which touches upon the subjects treated of in Section 16 of Chapter 3 or Chapters 4, 5 and 6, should have the above quoted general remark recorded on it, and the meaning of the remark should be explained to the parties concerned. The procedure with regard to this operation will be same as the above.

15. The Commissioners will direct the Kánúngos, Náib-Kánúngos and Patwárís of each district to be placed under the orders of the revising officers.

16. The work of revision should be undertaken tahsíl by tahsíl, and there will be no objection to employing the whole staff of Kánúngos and Náib-Kánúngos of the district in supervising the correction of the records of a single tahsíl, if it is found convenient to make this arrangement.

17. It is of great importance that the rectifications which the Tenancy Act renders necessary should be made quickly and correctly. Any alterations which may be required in consequence of decrees passed in suits brought under the Act can be made when each decree is passed, and there is no need whatever to delay making the rectifications because it is anticipated that there will be numerous suits brought to set aside the record of the first settlement. With reference to paragraph 6 of letter No. 103, dated 4th February, from Secretary to Government, Punjab, to Financial Commissioner, the revising officers are not to consider themselves precluded from hearing suits brought under the Act. The work of rectification of the new settlement record is the work for which they are specially appointed, and the hearing of suits must not be allowed to interfere with this work; but with this proviso, the revising officers should decide cases as they arise as promptly as possible.

18. Section 43 of the Act, and the stamp clauses of Sections 17 and 40 having been repealed by the Court Fees Act, VII of 1870, the proper stamps for cases between landlord and tenant will be found in the last part of Section 8 of that Act and in Article 5 of Schedule II.

19. A selection of the correspondence on which the present orders are based will be circulated for information.

No. 91, dated 29th July 1870.

From—E. A. PRINSEP, Esquire, Settlement Commissioner, Punjab,

To—The Secretary to Financial Commissioner, Punjab.

I HAVE to acknowledge the receipt of your No. 1177½, dated 19th instant, enclosing for my information copy of instructions issued by Financial Commissioner to District Officers, which are to empower certain Native Officers who are carrying out the revision of tenant entries in the new settlement records to interfere with the orders given by Settlement Officers in their *judicial* capacity.

2. The reason given by Financial Commissioner for this very unusual proceeding is found in this passage of his memo: It is discovered by Financial Commissioner that the officer deciding "had in his judicial decision awarded the cultivator, whose status had been degraded, a lease for a term of years, instead of the tenure recorded at the first settlement."

It is then stated that the Chief Court of the Punjab, in certain cases marginally noted, "had decided," and in this decision Financial Commissioner fully concurs, "that to award a lease for a term of years in a judicial decision without the consent of either party is illegal." The Financial Commissioner goes on to say it is not desirable or right that decisions which have been founded on a principle declared to be 'wrong should be allowed to stand, especially when the person whose rights are injuriously affected by that decision petitions again for restitution of his right under Clause 6 of the Tenancy Act.'

3. The case for the alleged illegality having thus been stated, District Officers are then instructed as follows:—" When the tenant to whom such a status has been awarded gives a petition for restoration of the status recorded

at the first settlement to the revising officers, such petition should, if practicable, and if the revising officer has jurisdiction, be treated as a petition for review of judgment, and the orders granting a lease for a term of years should be revised under the law of Civil Procedure."

4. With all due deference to superior authority, I feel it to be my duty to point out that this instruction of Financial Commissioner to District Officers is altogether beyond his jurisdiction, and contrary to the express provisions of even the Tenancy Act. Section 2 distinctly states that "nothing contained in this Act shall effect the operation of any decree of Court." This exemption is absolute when taken with the last section. It being consistent with the provisions of the Act that the Act is not to operate when decrees of Court have been given, it follows that our proceedings in this respect "must be deemed to have been taken in accordance with law."

5. But it is objected "that to award a lease for a term of years in a judicial decision, without the consent of either party, is illegal." Now, seeing that more than three years have elapsed in the larger number of cases since those decisions were given, *primâ facie* there is no reason for making so general an assumption as that the terms of such decisions have not been acquiesced in. If the consent of either party was not virtually given, it may be inferred that they would have appealed against such orders particularly when judicially given. If they did object, their grounds for objection must have been fairly heard and been disposed of. If they did not appeal when they knew they could appeal, surely it may be reasonably assumed that they did acquiesce in the propriety of the decision come to.

6. As to there being any illegality in a Settlement Officer inducing two parties representing two distinct interests on an estate the one to take the other to give a lease, such power is fully conferred by Sections IX and XX of Regulation VII of 1822, when read together or separately. Indeed, under the former section there is an express provision, rendering Collectors "and other officers making or revising a settlement competent to grant *pattahs* to the several mofusil zamíndárs and ryots, or other owners or occupants of land, for the land owned or occupied by them, specifying the amount to be paid by them, and all the *conditions attaching to their tenure*, and a register of all pattahs so granted shall form a part of the robkari of settlement."

7. By Section XX a special authority is given "to receive, try, and determine by summary process all suits which may be preferred ** by zamíndárs against any ** ryot or under-tenant of whatever denomination, and all complaints preferred by ryots or under-tenants of whatever description against land-holders, ** as well as all other matters, ** and generally complaints of any deviation from the regulations (including of course this regulation), or from the established usage of the country relative to the matters aforesaid, or any violation of subsisting engagements in disputes respecting the rent and occupancy of land between land-holders and their under-tenants of whatever denomination."

8. Now seeing that the law relating to the conduct of settlements does allow a Settlement Officer to given leases, and even a special authority to settle matters in dispute between "landholders and under ryots of whatever denomination" regarding rent and occupancy "of land" in their capacity as Settlement Officers, at a time when Settlement Officers had not the power of a Civil Court to try these disputes as regular suits, when the full judicial power was conferred (as it has been in the Punjab), the Settlement Officers still take action on all matters relating to the settlement under Regulation VII of 1822. The only difference being that in lieu of semi-judicial powers their position is strengthened in that the orders they pass in a judicial way are *final*, and are not liable to be brought again in the Civil Courts.

9. By reason then of the altered jurisdiction the act of Settlement Officers when based on the text of the instructions contained in Regulation VII of 1822 in all matters of a settlement character is in no way impaired. If he can

give a lease or settle a dispute in a summary way, there can be nothing illegal that I can perceive if he follows the spirit of this regulation, in the case of disputes that come before Settlement Officer in his capacity of a judicial officer, sitting in a Civil Court; for this simple reason that the full jurisdiction has been given to him only with the view of making his orders judicially given *final*, and to avoid the double jurisdiction of Revenue and Civil Courts, which was found to be productive of much delay, litigation, and expense to disputing parties.

10. The view then of these decisions which are now objected to may be put in this way. The chief issue is as to *status* ; has the tenant made out his case? It is found by the Court that he has not, and good reasons, it must be presumed, have been assigned if evidence has been taken and weighed for the finding. The first and chief issue having thus been disposed of, then comes another; shall the tenant be reduced to a mere tenancy-at-will? On this point he advances arguments for consideration : very often they amount to a plea to receive compensation. The Court here steps in as arbitrator and applies the equity clause, which as Settlement Officer he would apply as if there was no dispute, and concludes a settlement in the form of a pattah between the proprietor and the tenant, and in lieu of compensation or all further claim fixes a period for which he shall further hold before he can be liable to fall into the lower position of tenant-at-will.

11. Looking at these arrangements made by Settlement Officers, and giving to them the force of a judicial award in their position as Civil Courts, I confess I cannot perceive, looking to the general authority which the Settlement Regulations confer, that there is anything contrary to the provisions of that Regulation or which may in any way be deemed inequitable, seeing that whenever such periods have been fixed, they have been invariably fixed in the interests of the weaker party.

12. Nor do I find that there is anything contrary to the new Act (XXVIII of 1868), which has become law since these decrees of Court have been passed. Far from this, it would appear from the tenor of Chapter VI on "compensation for tenants' improvements" that the Courts hereafter *are* empowered to settle the matter of compensation by payment in money or by the grant of a beneficial lease of the land. In Section 40 it is expressly "provided in case of difference as to the amount or value of the compensation ** the Court after taking such evidence as the parties or either of them may adduce, *** shall determine, as the case may be, the amount of the payment *or the terms of the lease or both.*" Here we have the new law laying down instructions to adopt the very procedure which has already been carried out by the Settlement Courts; for after all when once the issue has been decided against the tenant as *to status*, the circumstances which have led the Court to fix a lease have nearly always turned upon a point as to whether the losing party is entitled to any consideration in the way of compensation, and where such leases for stated periods have been given, they amount in reality to compensation to all intents and purposes.

13. Throughout Regulation VII of 1822 will be found clauses empowering officers making or revising a settlement to make the best and most equitable arrangements he can in the interests of all who have conflicting claims to consideration. The Chief Court have held such arrangements are unknown to the law. Now, if Section 17 of the Regulation is read carefully, it will be seen that in cases of *mocurere* tenure, which have a certain analogy to the questionable position held by an hereditary cultivator, the Settlement Officer is authorized to conclude a settlement and to grant-pattahs defining the condition on which the land is to be held between them and the proprietors, and this notwithstanding either party may be dissatisfied. The only difference between these cases and the position of hereditary cultivators being that the mocurereedars being supposed to have a stronger title, the pattahs were to be "concluded" between them and the proprietor; whereas in the cases under consideration the issue of status being found to be not proved, and the stronger title being clearly shown to belong to the proprietor, the analogy would show

that the Revenue Laws do countenance the propriety of allowing settlements to be concluded in this way "by pattahs."

14. So, again, under Section 10 in the second case put, of estates belonging to one or more Sadr malguzars held by other persons possessing a hereditary right of occupancy, "if the title of the said malguzar be upheld, it shall be competent to a Settlement Officer to make a mofussil settlement with each of the proprietors or occupants aforesaid ** and to grant such proprietors or occupants pattahs defining the condition on which they are to hold," and this is even a clearer instruction.

15. Again, I would give the analogy of Talukdári cases decided at the first settlement, in which the law allows the decision of the Settlement Officer to take the form of a compromise. The claims to ownership or superior title not being established was disallowed, but because there were other grounds of consideration, a money allowance was fixed. Nearly all these claims were decided judicially in contested action, and the terms of the compromise were included in the decree given. The Chief Court in their letter No. 1918, dated 9th April 1867, to address of Financial Commissioner, on a reference made as to whether the Talukdári allowances thus fixed were final, gave it as their opinion that Settlement Officers fixed these allowances in their *executive capacity as Settlement Officers*, although it was pointed out to the Chief Court on the reference that, as a matter of fact, these compromises had been made *judicially*, and the rate of the allowances was included in the decree.

16. I allude to this here to show (1) that even the Chief Court recognized the authority of Settlement Officer to effect a compromise as between these two parties; and (2) that the power to assume the position of a Settlement Officer in an executive capacity, even when deciding a case judicially, is here duly recognized; and this is the strong point of my defence of what we have done. Either way we were not out of jurisdiction. Supposing, for instance, we had not acted in our capacity of officers with full judicial power, but under Regulation VII of 1822, there are circumstances and positions which *do* admit of Settlement Officers granting pattahs which are known to that law; and Settlement Officers are competent to "conclude a settlement" specifying all the conditions "attaching to the tenure in this way as between each proprietor or occupant." If it be said that the position of Settlement Officers has been altered from what it was under this Regulation when it was enacted, they are now invested with the powers of a Civil Court. This does not preclude the Settlement Officer when exercising full jurisdiction from being guided by the principles and rules laid down in the only Regulation for trying and determining "all suits," "all complaints," "and all other matters between land-holders and their tenants of whatever denomination," the principles and rules for determining which are not to be found anywhere except within the four corners of Regulation VII of 1822 during such time as a settlement is being conducted.

17. Whether, then, we look at the question according to the procedure laid down for guidance of Settlement Officers when conducting a settlement before the new law was passed, or to the express provisions therein contained, and remembering that, though invested with the full powers of the law as Civil Court, still these Courts are strictly *equity* Courts, and the highest authority has ruled that the Settlement Officers presiding shall be guided by "custom, equity, and good sense," it does not appear to me the case if illegality is in reality made out.

18. Where the Chief Court appears to have arrived at an incorrect conclusion when they say that by giving these leases we have "created a temporary tenure hitherto unknown," is this, that they have considered we have "conferred a certain estate made up of an arbitrary term of years *in lieu of a tenure* recorded at last settlement," which the tenant had been previously recorded as possessing. Financial Commissioner in this letter makes the same remarks, "the cultivator whose status has been degraded was awarded a lease for a term of years *instead* of the *tenure* recorded at the first settlement."

Now, as far as these *judicial* decisions go, this is not the case in reality—the claim is either from the proprietor denying the right of occupancy, or from the tenant asserting a claim for the higher position of ownership. The issues are framed, the Court proceeds with them, and judicially finds that by no ordinary test accepted in the previous orders of Government or known to the country, *viz.*, by the test of established usage, has the right to the ownership or to the occupancy status been proved. The finding is always given on this point; and if the claim is not proved on the real and chief issue, it is clear the Court is at liberty to decide the entry on the record to be wrong; if it has been rebutted by the proprietor, the evidence is against the tenant, and, having no case, his claim is disallowed. Finding having been given on that issue, it seems to me it is going too far to say that "an estate made up of an arbitrary term of years" is given to him *instead*. As a matter of fact, there is nothing of the kind; he has been found not entitled to the status, and then the Judge, as Settlement Officer, dealing between man and man, tries to effect a compromise.

19. As well might it be said in the case of an absentee proprietor suing against another proprietor, where it is found that the former is entitled to a decree, and the decree is given conditionally on the payment of a certain amount for expenses incurred, that because the Court deems it proper to allow compensation, that the Court has created "a temporary tenure hitherto unknown," because the property is not decreed absolutely, but a condition of compensation is attached to the decree, as a sort of set-off to the losing party for having to give up what he believes to be his, but which the Court has distinctly found he is not entitled to. I protest against the way in which the facts of the enquiry have thus been represented to be what they are not.

20. The reason why it appears to me the Chief Court have not rightly appreciated the rectitude of what we have done in this respect is that they do not sufficiently value Regulation VII of 1822 as the chief guide to a Settlement Officer. Of course, if they or the Government considered that Settlement Officers were no longer to accept this law as the authority under which they could act, then it was for superior authority to have duly published for general information what they were to look to as containing the principles and procedure for conducting a settlement. It seems to my mind particularly hard, after action has been taken under its provisions for seven years, to turn round against our proceedings and impugn their legal force or effect.

21. Even the "Directions to Settlement Officers" lays down such principles as these :—

"*Para.* 146. Having successfully accomplished this, and thereby conferred on them a new and valuable property (Settlement Officer), calls upon them * * to come to an agreement on all points likely to produce disputes amongst them; he then reduces the terms of the agreement to record, and gives to the record the stamp of judicial authority.

"*Para.* 147. Settlement Officer should do everything, as much as possible, through the people, deciding nothing himself that he can avoid, and also by being most careful that every minute feature of a tenure and every possible hearing of a right is fully recorded.

"*Para.* 148. If a difficulty arises, it should at once be brought to Settlement Officer's notice, who, * * if all his efforts fail, should lay it aside for future determination by assessors. (The Chief Court wish to make out that we could not call in assessors.)

"*Para.* 149. * * Each peculiarity of the tenure probably has to be elicited by repeated questions, and the expressions to be very carefully adjusted so as exactly to meet the case.

" *Para.* 150. Some parts of the process materially affecting the exercise of the proprietary right are not altogether judicial, but depend also on the discretion of the Settlement Officer acting under such orders as he may receive from Government."

22. Now the orders we received from the Government of the Punjab were to proceed on the principles we had adopted, acting under the general and larger discretion given in Regulation VII of 1822. Three Financial Commissioners and His Honor the Lieutenant-Governor confirmed our proceedings and the *modus operandi.* Colonel Lake, your predecessor, has put on record—"it is equally certain that the procedure introduced by Mr. Prinsep for ascertaining the tenure of each tenant is far superior to that adopted at last settlement, and *is the best possible* that *could be desired under the circumstances.*" In his No. 2279, dated 6th June 1865, he shared with me "the responsibility of preparing the papers in the manner proposed."

23. More than this—Mr. Egerton even has expressed himself satisfied that there was nothing in itself wrong or inequitable in the present Settlement Officers awarding "to such tenant, by way of consideration, for any loss he may have sustained by a terminable lease being given of the lands so occupied by him; for at the Murree Committee he himself moved, and the Committee concurred in his motion, that although the Chief Court had ruled that such compromises were not known to the law, "all *such awards should stand,* as Mr. Roberts and Colonel Lake had expressed a strong opinion in favor of the fairness and thoroughness of the procedure by which these decisions were arrived at, and of their substantial equity."

24. When, besides what I have above pointed out, we have here the concurrence of three Financial Commissioners, and the recorded opinion of His Honor the Lieutenant-Governor as to the undoubted fairness, in an *equity* point of view, of even these awards when they have summarily given compensation by terminable leases, it does appear to me that when these terms were part of a decree of Court once given, and have not been objected to until this work of revision had altogether unsettled men's minds), this order undoing the equity part of the decree which Financial Commissioner has now passed is altogether very undesirable and likely to be attended with the worst of consequences.

25. Settlement Courts are not mere Courts of Law. They have to make the best arrangements they can between man and man, when conflicting interests in the same piece of land take the form of actual dispute. They have always been held to be equity Courts, and a large discretion must be given to Settlement Officers when they have to consider the various and complicated aspects of tenure of land in that light which it is their duty to consider it, according to the established usage of the country, and on the analogy of numerous awards given by puncháyats and assessors as to what should be a proper decision, in unison with the acknowledged feelings of the country.

26. Many of these decisions have been already accepted in appeal by Mr. Egerton's predecessors, who have had concurrent jurisdiction with the Chief Court. Are these also, I wish to learn, to be re-opened ? If they are not to be re-opened, then I protest against any of my decisions being thus interfered with by a number of Native Officers occupying the position of Tahsíldárs and Extra Assistants to whom you have entrusted the duty of formally revising judicial decisions: such a thing I have never heard of being done since I have been a servant of Her Majesty's Government. They have no legal power to do this, and before a single one of these decrees of Court is interfered with, I have most respectfully to request that Financial Commissioner will reconsider the matter, and favor me with the precise chapter and verse of the law under which he deems himself authorized to issue such instructions.

27. I beg further to point out that if a statement is to be prepared to ascertain the number of cases so decided, a column should be inserted between

No. 1 and 2 to show how many such cases had been upheld in appeal by Financial Commissioner as well. I do not exactly see the reason why these should be omitted from a place in such statement.

P. S.—With reference to what I have urged against the view taken by the Chief Court, I can do no better than add here an extract from the minute of Sir Erskine Perry, a Member of Her Majesty's Council in England. He says—"the legal effect of this second settlement was, however, much questioned, and a decision of the Chief Court of the Punjab overruled some of its awards comprising a great number of cases; but the decision, I may remark, did not impugn the validity of the revision, but objected on grounds not very satisfactory, as it appears to me to be some of the compromises which Mr. Prinsep had effected." Here atleast is the opinion of an eminent lawyer and *ex*-Judge of a High Court of this country, who can find nothing objectionable in the compromises that were effected; and this is the light in which he views the matter.

No. 736, dated Lahore, 4th November 1870.

From—J. A. E. MILLER, Esquire, Secretary to Financial Commissioner, Punjab,
To—The Secretary to Government, Punjab.

FORWARDS for orders a memo. by the Financial Commissioner on the revision of certain judicial decisions of the Settlement Courts affecting the rights of occupancy tenants, together with the papers therein alluded to.

Financial Commissioner's Circular Memo. No. 4171, dated 19th July 1870.

THE copy of the memorandum above quoted, which is herewith forwarded, will show the nature of the cases which are detailed in the statement attached; but my object in making this reference to Government must be explained, and in order to make the case clear I must enter into some detail.

2. When the orders of Government, Punjab, contained in the letters marginally noted began to be carried into effect in the districts of Lahore, Gujránwála, Amritsar, Gurdáspur, and Siálkot, which had come under the operations of the revised settlement conducted by Mr. Prinsep, a number of petitions were received by the officers appointed to revise the tenant entries from cultivators who had formerly been recorded as by right of occupancy, but whose status had been altered at revision of settlement. Many of these petitions were presented unnecessarily, as they related to cases in which the record of the revised settlement would have been altered by the revising officer acting under the general instructions he had received. Some were from cultivators whose status had been altered by a judicial decision; and by Section 2 of Act XXVIII of 1868 the revising officer had no power to alter entries made in accordance with such decisions. Amongst the judicial decisions, however, there were some cases in which the decrees of the Settlement Courts gave a tenant formerly recorded as possessing right of occupancy a lease for a period of years, varying in length according to the amount of consideration which the Court deemed that the cultivator deserved. The grant of such a lease was a privilege or concession intended to lighten the hardship which would have occurred if the cultivator had been made liable to summary ejectment; and so long as the records remained in the form in which they were at first cast, there is no doubt that the lease for a term of years was a privilege. When, however, the records came to be revised under the orders already quoted, and when every tenant recorded at the first settlement as having right of occupancy was reinstated in his former position, and held to have a right of occupancy under Section 6 of the Act, the lease for a term of years lost its value.

No. 1196, dated 6th October 1869.
„ 1344, dated 22nd November 1869.
„ 103, dated 4th February 1870.

3. Hence those cultivators who had received such a lease by decree of Court were placed in an exceptional position. The privilege conferred upon them was no longer a privilege; but as it had been awarded them in a decree, their

status could not be altered. And these men who had urged their claims vigorously by a regular suit found themselves in a worse position than others who had made no such effort.

4. There was this difference too between these cases and those which had been decided by the Settlement Courts, in which the right of occupancy recorded at the first settlement had been lowered to that of a tenant without right of occupancy—that the Chief Court of the Punjab had in the appeals cited in the Circular Memo. decided that the award of a lease for a term of years in lieu of a right of occupancy was illegal in principle, as it conferred an estate not recognized by the law or the custom of the country. On examining many of these cases in which judicial decisions had been passed by the Settlement Courts, I found that the way in which they came into the Settlement Courts had been as follows:—In making the general enquiry into the status of tenants, a review of the nature of each man's holding was made in the form which will be found at pages 172 *et seq.* of the Tenancy Act Selection, and in the mode recorded at page 152 of the same Selection. The former status was altered or maintained, and the status recorded in this manner was the basis of the record, and not the former recorded status, which the law now declares should be considered the basis. To set aside the award of the revised settlement, a suit might be brought, and the suits to which I am alluding were so brought. The cultivator whose rights had been affected was put into the position of a plaintiff instead of that of a defendant, and the Court decided whether he had or had not made out his case for a right of occupancy. The grounds for awarding a lease for a term of years were general considerations of the hardship which the cultivator would incur if he were declared a tenant-at-will, and of the *quasi*-right he had acquired during his occupancy.

Mr. Prinsep's account of the reasons which led to the practice are given at pages 555 and 587 of the Selection.

5. I have nothing to say against the cases in which the decision of the Court gave the plaintiff a right of occupancy, or declared him to be a tenant-at-will, as either status is recognized by the law. It is those cases only in which the decree was for a lease for a term of years, an estate which has been declared by the Chief Court to be a measure of right which is not recognized by the general law and custom of the Punjab (*see* paragraph 28, Chief Court's Minutes on Tenancy Bill, page 609 of Selection).

6. It seems anomalous and unjust to maintain these decisions which have proceeded on a principle declared to be illegal, and I think that some means of rectifying them should be taken.

7. I proposed that petitions should be considered as applications for review of judgment by the Courts having jurisdiction,—that is, District Courts with jurisdiction co-ordinate with the Settlement Court by which the decision was passed,—as I considered that it may be held that the business of the Settlement Courts has been transferred to such Courts, and thus the Civil Court would have power of review under Section 9, Act VII of 1868; but this plan has not been successful. The Settlement Commissioner in his letter No. 91, dated 29th July 1870, which is enclosed, says that he considers it illegal to review cases in the manner proposed by me. I do not consider it illegal. It is not to be recommended that cases should be allowed to come under review too easily; but where a whole class of cases has been decided on a wrong principle, it seems permissible to make the utmost use of the procedure which the law allows to remedy the error.

8. If the law does not allow the procedure which I recommend, then I think some other means should be taken to bring these decisions under review.

9. To allow the cultivators who brought these suits to remain in their present condition, while others who did not sue are restored to the status recorded at the first settlement, does not appear just.

10. If the whole of Mr. Prinsep's record had been maintained, these decisions might have remained untouched: under the present rules they appear indefensible. If the procedure by review is considered admissible, it may be possible to review all the cases in which reviews are desired; but if this procedure is illegal, then special rules for reviewing those cases should, I think, be enacted.

Circular Memo. No. 4171, dated 19th July 1870.

THE following remarks have been recorded by the Financial Commissioner, after inspection of the files of tenancy cases recently called for, and are circulated to the officers concerned for guidance.

Memo. on Revision of tenancy entries in cases judicially decided.

FROM an inspection of some cases relating to the status of cultivators with right of occupancy, I have observed that petitions for restoration of the status recorded at the first settlement have been rejected, because that status has been lowered by a judicial order passed during revision of settlement; and on examining some of these judicial orders, I have found that the officer deciding the case had, in his judicial decision, awarded the cultivator whose status had been degraded a lease for a term of years instead of the tenure recorded at the first settlement. It has been decided by the Chief Court of the Punjab in the cases marginally noted—and in this decision I fully concur—that to award a lease for a term of years in a judicial decision, without the consent of either party, is illegal. It is not desirable or right that decisions which have been founded on a principle declared to be wrong should be allowed to stand, especially when the person whose rights are injuriously affected by that decision petitions again for restitution of his rights under Section 6 of the Tenancy Act. It is not known what number of such cases there are in the districts under revision of entries relating to the status of tenants. The Deputy Commissioners of the districts named in the margin should therefore direct the officers specially appointed to conduct the revision to examine the cases relating to tenants with right of occupancy which have been judicially decided, and report the number of those in which a lease for a term of years has been awarded in the decree to a tenant recorded at the first settlement as having a right of occupancy.

Gopál Singh *versus* Jowáhir Singh, 3—Punjab Record No. 1, dated 5th December 1867.
Nathu Khán *versus* Sultán, 3—Punjab Record No. 18, dated 24th January 1868.
Het Rám *versus* Toortee—Punjab Record No. 42, dated 15th February 1868.

Lahore.
Gujránwála.
Amritsar.
Siálkot.
Gurdáspur.

Where the tenant to whom such a status has been awarded gives a petition for restoration of the status recorded at the first settlement to the revising officer, such petition should, if practicable, and if the revising officer has jurisdiction, be treated as a petition for review of judgment; and the order granting a lease for a term of years should be revised under the law of Civil Procedure. Some cases will no doubt remain in which no petitions will be presented; and regarding the disposal of such cases orders will be issued when the number of them is ascertained. The statement showing the number of cases should be in the annexed form :—

Statement of cases judicially decided in the District in which persons recorded at the first Settlement as hereditary cultivators have been awarded leases for a term of years by decree of Court.

1	2	3	4	5	6	7
NAME OF TAHSIL.	NUMBER OF CASES DECIDED, ORIGINAL OR IN APPEAL.				Number of cases rejected by revising officer on account of judicial decision existing.	REMARKS.
	By Settlement Commissioner.	By Settlement Officers or Assistant Settlement Officers.	By Extra Assistant Commissioners.	By Superintendents of Settlement.		

Minute by the Hon'ble Sir HENRY DURAND, C.B., K.C.S.I., Lieutenant-Governor of the Punjab.

I HAVE considered the protest of the Settlement Commissioner, Mr. E. Prinsep, and the remarks thereon of the Financial Commissioner, Mr. Egerton.

Mr. Prinsep challenges the decision of the Chief Court as being in conflict with the powers and discretion entrusted to Settlement Officers by Act VII of 1822; Mr. Egerton accepts their decision, and considers it to invalidate the proceedings of Mr. Prinsep on one special point.

The analogies which Mr. Prinsep endeavours to establish in defence of his own views, and in opposition to those of the Chief Court, hardly seem to me apposite. But the question whether they are so or not, or in what degree applicable, it appears almost unnecessary to analyse. The judicial decision of the Chief Court, supported as it is by the concurrence of the Financial Commissioner,—an officer who in districts under settlement exercises the same jurisdiction with the Chief Court in such questions,—relieves the Government of any necessity for weighing this conflict of opinion.

Upon such authority as those of the Chief Court and the Financial Commissioner, the decision which pronounced Mr. Prinsep's compensation leases illegal must be accepted, unless subverted by higher legal authority.

It must be observed that this decision seems based on grounds independent of the Punjab Tenancy Act, and partly on a construction of Act VII of 1822, which denies to Settlement Officers the power of creating new tenures under that Act. This point of conflict as to the scope of Act VII of 1822 is only here noticed to indicate the radical diversity of opinion on an important point, quite apart from the aim and scope of the Punjab Tenancy Act.

Whether rightly or wrongly is not here the question; but the Punjab Tenancy Act was passed to remedy the measures of revision, which were carried out (avowedly under the powers conferred, or believed to be conferred, by Act VII of 1822) when Mr. Prinsep revised the settlements.

Assuming—which must be done, as the Act is law—the necessity for this remedial action as enjoined and provided for by the provisions of the Act, the equity of Mr. Egerton's views and action cannot be contested. It is in harmony with the intenton of the Punjab Tenancy Act, and in pursuance of its spirit: whether it be technically defensible is a more dubious point. Mr. Prinsep argues upon the provision of Section 2 of Chapter I of the Punjab Tenancy Act, having first endeavoured to shake the decision of the Chief Court before adverted to, that as his compensation leases were decrees of Court, it is beyond the competence of the Financial Commissioner to issue the circular he has promulgated; that it was *ultra vires* and contrary to that Act, as well as to Regulation VII of 1822.

But taken in connection with Section 45, the concluding section of the Punjab Tenancy Act, it is open to doubt whether Section 2 would cover decrees pronounced illegal by the Chief Court, and certainly not consistent with the provisions of the Punjab Tenancy Act for remedying the records and the status of tenants claiming to be occupancy tenants. I am disposed to think that Section 2 cannot, without straining, have such a construction put upon its scope. Consequently I think the object of the circular was right, as well as equitable, in reference to Sections 2 and 45.

At the same time a circular of the kind was as much an executive as a judicial process, and involving, as it probably will, much revision of recorded cases. In consequence of the instruction it conveys, the approval of the Punjab Government to the measure might with propriety have been first obtained, in order that it should have had the option of leaving such claimants for revision of status to bring in their suits in ordinary course for revision of judgment, or of obtaining a supplemental section to the Punjab Tenancy Act, in remedy of an omission which may be presumed to have escaped the framers of the Act in question.

As there is a good deal of conflict of opinion in these papers, it is advisable that the sense of the Government of India should be taken, in case it should be held desirable that legislative action is requisite to supplement what may be an oversight in the Punjab Tenancy Act, and to legalize the Financial Commissioner's procedure.

No. 789, dated Lahore, 23rd December 1870.

From—T. H. THORNTON, Esquire, Secretary to Government, Punjab,

To—The Offg. Secretary to the Government of India, Home Department.

From E. A. Prinsep, Esquire, Settlement Commissioner, to the Secretary to the Financial Commissioner, No. 91, dated 29th July 1870.

From Secretary to Financial Commissioner, to Secretary to Government, Punjab, No. 736, dated 4th November, with enclosure.

I HAVE the honor, by direction of Sir Henry Durand, to submit, for the consideration and orders of the Supreme Government, copy of the correspondence noted in the margin, together with copy of a minute by the Hon'ble the Lieutenant-Governor, on the subject of a circular recently issued by the Financial Commissioner regarding the disposal of a certain class of cases arising under the Punjab Tenancy Act.

2. The circumstances which have given rise to this correspondence are the following.

3. In revising the settlements of the Amritsar and Lahore Divisions, Mr. Prinsep reduced to the status of tenants-at-will a large number of tenants recorded in the previous settlements as having a right of occupancy; but in order to lessen the hardship of reduction, he introduced a system of granting the tenants so reduced protection from eviction or arbitrary enhancement of rent for a certain term of years. In many cases the tenants so reduced brought suits for restoration of status; but the Settlement Courts,* acting under Mr. Prinsep's instructions, confirmed the award made, and issued decrees declaring the tenants to be tenants-at-will with a certain term of protection.

4. One of the cases was appealed to the Chief Court, and the decree was pronounced to be illegal, as the law did not recognize a class of "tenants with protection for a limited term;" moreover, there was no custom or usage having the force of law in support of such a tenure.

5. Meanwhile, the Punjab Tenancy Act was passed, and under its provisions the bulk of the tenants whose status had been reduced by Mr. Prinsep were restored provisionally to the status which they before occupied; and it was left to the landlords to disprove by suit in the Civil Court the correctness of the status as recorded in the former settlement. But the Act excepted cases in which the status of *a tenant had been fixed by decree of Court.*

6. The result is that while most of the tenants who had lost status under Mr. Prinsep's Settlement have been restored, a large number, whose reduction had been confirmed by a decree of Court declaring them to be tenants-at-will with protection, find themselves excluded from the benefit of the provisions of the Tenancy Act—not because their claims are weaker, and not from any laches on their part, but because their status was fixed by a decree of Court, which decree, however, was declared to be illegal by Chief Court in the first case appealed to it, and is opposed to the principles of the Punjab Tenancy Act.

7. Mr. Egerton, the Financial Commissioner, considered it inequitable that tenants so situated should be excluded from the benefit of the provisions of the Act, and thought it just that as they were barred from restoration by the operation of an illegal decree, they should have an opportunity of having the illegal decision reconsidered. Accordingly, as the Code of Civil Procedure (which governs the procedure of suits under the Punjab Tenancy Act) permits a review of judgment at any period after the passing of such judgment on good and sufficient cause being shown for delay in petitioning for review, Mr. Egerton

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* NOTE.—The Settlement Officers in the Punjab have judicial powers.

issued instructions to the effect that petitions by tenants suffering under the illegal decrees above referred to should be treated as petitions for review of judgment and be dealt with accordingly.

8. Against this circular Mr. Prinsep has protested, and the Financial Commissioner has submitted Mr. Prinsep's protest with a letter explaining the reasons for the action taken by him. The views of the Hon'ble the Lieutenant-Governor are contained in his minute, copy of which accompanies.

No. 151 R., dated 17th March 1871.

From—H. LEPOER WYNNE, Esquire, Under-Secretary to the Government of India, Foreign Department,
To—The Secretary to Government, Punjab.

IN reply to your letter, dated the 23rd December last, No. 789, I am directed to state that the Viceroy and Governor-General in Council entertains no doubt whatever as to the correctness and legality of the circular of the Financial Commissioner to which Mr. Prinsep objects.

Endorsement by the Punjab Government.

No. 158, dated Lahore, 18th March 1871.

COPIES of the letter to Government and above forwarded to E. O'Brien, Esquire, Secretary to Financial Commissioner, Punjab, with reference to his No. 736, dated 4th November 1870, and original enclosure returned.

No. 178, dated 16th July 1889.

From—H. C. FANSHAWE, Esquire, Junior Secretary to Government, Punjab,
To—The Junior Secretary to Financial Commissioner, Punjab.

WITH reference to your endorsement No. 114 C. of the 1st July 1889, I am directed to forward, for distribution to the Settlement Officers concerned, printed copies of the recent correspondence regarding the entries to be made in the revised records with respect to those tenants who were shown as panáhi tenants in the records prepared at Mr. Prinsep's settlements.

Memo. by Colonel E. G. WACE, First Financial Commissioner, Punjab,—dated 18th February 1889.

IT appears from the correspondence* submitted that in the Amritsar and Gurdáspur Districts, and probably in other districts re-settled between the years 1860 and 1870, there are a number of tenants described in the revised settlement records not under the ordinary terms of hereditary and non-hereditary, nor as tenants with right of occupancy or without right of occupancy, but as protected (panáhi) tenants.

* Letters from the Commissioner, Lahore Division, Nos. 82 and 121 of 28th January and 9th February 1889.

The "panáhi" entry is, moreover, variously qualified; *e. g.*—

Muzára duami.
„ panáhi duam.
„ „ kadím.
„ panáhi.
„ „ tá hayát.
„ „ miádi, 30, 25, 20 and 10 years.
„ „ tá kaimi máfi.
„ „ „ makán.
„ „ bandobasti.
„ „ tá sep.
„ máfidár.
„ ardási.
„ khairáti.
„ takiádár.

The Settlement Officer of Gurdáspur has in the revised record of rights now being prepared by him recorded all these panáhi tenants as tenants with-

out a right of occupancy; but he has also repeated in his new record the terms by which their tenure was described in the previous record. He argues that the tenant entries in the former record were revised by an Extra Assistant Commissioner in 1870; and that if that officer did not class a tenant as possessing a right of occupancy, it does not fall to the Revenue Officer who now again revises the record to describe the tenant as possessing that peculiar legal status. But this last inference is incorrect. The Extra Assistant Commissioner's work of 1870 was confined to restoring to the record entries of hereditary right removed without due authority by the Settlement Commissioner.

Mr. Grant, the Settlement Officer of Amritsar, doubts whether a Revenue Officer revising a former record of rights is justified in ranging all tenants whatsoever as holding under one or other section of Chapter II of the Tenancy Act; and for the present has directed his subordinates merely to repeat the previous entry. At the same time he points out that there are cases where the term of stipulated protection has expired, and that there are other cases in which the panáhi tenant has either obtained a decree declaring his right of occupancy or on the suit of the land has had his rent enhanced as if he were a tenant with right of occupancy.

I think that both Settlement Officers should be guided by the following general principles:—

(*i*). If since the last record was made a decree has been passed of which the effect is to declare that the tenant has a right of occupancy, or by which his rent was enhanced in the manner provided by law for tenants with right of occupancy, the record should be amended so as to bring it into agreement with the decree that has been passed.

(*ii*). If the tenant was recorded "panáhi" for a stated term or subject to the continuance of some status or service (tá kaimi makán, tá sep, máfidár, takiádár and such like), and the term or status has not lapsed, the entry should be continued unaltered, but a reference to the settlement record in which it was first made should be added; *e. g.*, "panáhi tá sep according to entry made in settlement record of 1866."

(*iii*). In cases in which the tenant was recorded panáhi for a particular term or in a particular status, which term or status has lapsed, the entry should be repeated without alteration; but a note should be added under the entry stating the date of the original entry and the facts affecting that entry which have subsequently occurred.

(*iv*). If the entry gives to the tenant unconditional protection, the identical terms of the entry should be repeated without alteration or addition of any kind. Such cases are muzára duami, panáhi duam, panáhi kadím. In these cases it will be for the Courts eventually to say whether or not the tenant has a right of occupancy. Meantime in all statistical returns they should be classed as occupancy tenants, for the entry primarily bears this meaning.

(*v*). In cases in which the record of rights under revision does not distinctly group the tenants into two class—(*a*) with right of occupancy, and (*b*) without right of occupancy—the Settlement Officer should not now add to the record of rights a classification of this nature. He should alter and add to the entries only to the extent above directed. And at the same time in the abstract returns prepared by the Patwári he need have no hesitation in grouping tenants who are protected permanently and unconditionally as tenants with rights of occupancy.

These instructions are framed with strict regard to the terms of Section 37 of the Land Revenue Act. Unless the terms of that section are adhered to very strictly, I apprehend that we may lay ourselves under the same imputation of altering arbitrarily the second settlement record as was incurred by Mr. Prinsep in respect of the first settlement record.

No. 82, dated 28th January 1889.

From—C. M. RIVAZ, Esquire, Commissioner and Superintendent, Lahore Division,
To—The Senior Secretary to Financial Commissioner, Punjab.

I HAVE the honor to submit, for the Financial Commissioner's orders, copy of a letter from the Settlement Officer, Amritsar, No. 464 of the 18th ultimo, enquiring how tenants who were recorded at Mr. Prinsep's settlement of 1865 as protected (panáhi), whether for a term of years or otherwise, and who were not subsequently awarded a Section 6 occupancy status when Mr. Prinsep's proceedings in connection with tenant entries were revised after the passing of Act XXVIII of 1868, are to be recorded at the present re-settlement. I forward also copy of a letter from the Settlement Officer, Gurdáspur, No 11 of the 14th instant, and its enclosure, which shows how the matter under reference is being treated by Mr. Dane.

2. It seems to me that Mr. Dane is quite right in adopting the procedure he mentions, and that Mr. Grant ought to take similar action in his settlement. The "panáhi" tenants of Mr. Prinsep's settlement, who were not awarded an occupancy status when his record was revised after the passing of Act XXVIII of 1868, or who have not subsequently obtained such status by a judicial decree or an agreement in writing on part of the landlord, should, I think, be now recorded as tenants not having a right of occupancy, a note being made against each such entry to show the designation which was given to the tenant at the settlement of 1865, or the substance of any subsequent contract or judicial decree in regard to his holding for a fixed term. The tenant should be left, if he considers he has a claim to a right of occupancy, to establish it by bringing a suit under Section 77 (3) (*d*) of the Tenancy Act, or to contest his liability to ejectment whenever the landlord may try to eject him by suit or notice.

No. 464, dated 18th December 1888.

From—J. A. GRANT, Esquire, Settlement Officer, Amritsar,
To—The Commissioner and Superintendent, Lahore Division.

I HAVE the honor to request instructions as to how certain tenants are to be recorded in this settlement.

2. In the first settlement of 1852 tenants were, as a rule, recorded as hereditary or removable at the pleasure of the landlord. In the revised settlement of 1865 it appears to have been Mr. Prinsep's intention to continue to record some tenants as hereditary and to give to others protection, or panáh, for a certain number of years, presumably in order to allow them the advantage of improvements carried out during their occupation. What his intention exactly was I can only guess at, having, as already reported, no correspondence relating to last settlement to refer to. He framed for each village a "record of enquiry into the rights of tenants," in which particulars of certain tenants to whom it was proposed to extend protection were entered. Their statements and those of their landlords were recorded on the point of their having a claim to occupancy rights or being liable to ejectment, and then the opinion of assessors was taken. If landlord and tenant were agreed as to the tenants' rights, an order was passed giving effect to this agreement in the record. If they did not agree, and the cases in which they did were rare, the opinion of the assessors was taken as the basis of the order passed, and the entry in the record was made accordingly. The result was that tenants were described in the record in very various ways and as holding their lands under all sorts of conditions.

3. After the passing of the Tenancy Act you are aware that the district was once more put under settlement (Punjab Government Notification No. 912 of 4th December 1868), in order that Mr. Prinsep's proceedings in connection with tenancy entries might be reviewed and brought into conformity with the Act. It was at first proposed to classify the tenants, who had been wrongly entered as non-hereditary by Mr. Prinsep, and show them as holding under Section 5 or under Section 6 of the Act, as the case might be (paragraph 4 of letter No. 898, dated 1st December 1868, from Secretary to Government, Punjab, to Secretary to Financial Commissioner). But this was abandoned eventually, and further orders (from Secretary to Government, to Secretary to Financial Commissioner, No. 1196, dated 6th October 1869) directed that tenants who had been recorded as 'maurúsi' in the first regular settlement of 1852, and who had not been recorded as such in the settlement of 1865, were now to be shown as tenants with right of occupancy under Section 6 of Act XXVIII of 1868. This was carried out in Amritsar by Agha Kalbabid, Extra Assistant Commissioner, and the settlement record was corrected in red ink under his signature.

4. We might continue this archaic description, and leave the panáhís to be gradually absorbed in the ranks of tenants with rights or tenants-at-will, according as may be decided in particular suits affecting their holdings. But the description would have little meaning in the case of "panáhís tá kaimi máfi," whose máfís have been resumed, of "panáhís miádí do sál," whose protection ceased in 1867, or the heirs of deceased "panáhís tá hayát." Nor, if the wording of the last record were literally followed, would Courts be able to tell from the new record when the panáh began, or whether it was given in 1865 or during the present settlement.

5. But there were a number of tenants who had not been recorded as "maurúsi" in 1852, but who had been entered as "panáhi" in 1865. In the case of these men no correction was made in the record, and to this day they are shown as "panáhi kadím," "panáhi duami," &c. Many of them have since proved their possession of occupancy rights in ejectment proceedings. In other cases landlords have assumed that a panáhi kadím or duami is the same as a tenant with occupancy rights, and have sued to enhance the rent fixed (generally revenue and cesses plus a percentage on the revenue as málikána) by the assessors in 1865. This of course raised the issue as to the tenants' exact status, and by decisions given in such suits many panáhi kadíms have obtained the status of occupancy tenants under Section 6 of the Act. The question now arises, how are those tenants who are still recorded as panáhís to be recorded in the papers of the present settlement? I think I may safely say that all the various descriptions are regarded by the people as having occupancy rights of some kind; ill-defined it may be, but still giving them a status superior to the tenant who may be ejected at will. To show how various the descriptions are, I append a list of those principally found. Whether or not such description was recognized by direction of the Settlement Commissioner I am unable to say, but many of them are no doubt refinements on his instructions for which individual patwárís are responsible.

6. Again, it might be assumed that we are bound to range all tenants whatsoever as holding under one or other section of the present Act, and sort out the panáhís accordingly. I believe this course has been followed in Gurdáspur, though as a precaution the conditions of the "panáhs" have been in each such case transcribed from the old record and added to the description given in the new. But I have some doubts whether a Revenue Officer is empowered to carry out this alteration except in conformity with agreement or order of Court, even though both tenant and landlord have always the right to contest the correctness of the entry by bringing a suit, and the litigation that might ensue according as the old entries were liberally interpreted in favour of landlord or of tenant right prove to be formidable.

7. There are cases too where the "panáh" was given for 30 years, and in which it has not accordingly expired. If the panáh be held to have been

given under proper authority in 1865, it would follow that the entry could not now be justly interfered with.

8. I am meanwhile issuing orders that in the case of panáhi tenants the entries shall be literally repeated in the new record, but on the ground that I am in doubt as to how they should be treated, and have not access to any correspondence which would throw light on the matter, I would ask for early orders as to how these cases should be dealt with.

9. I may add that the only reference to the "panáhi" system that I can find in the District Office file of correspondence which took place when the records were revised in 1870 is to be found in a Circular issued by the Commissioner of Amritsar (No. 59, dated 12th April 1870). In this Colonel McNeile observed that "where under the 'panáh' system a tenant has been actually evicted after expiry of the term of grace, his status of hereditary tenant *quoad* the land so vacated cannot be restored in the revision proceedings." But from all I can learn, the cases are rare where a tenant was so evicted.

List showing the Principal Miscellaneous Descriptions given to Tenants in the Record of the Revised Settlement of Amritsar (1865).

1. Muzára duami.
2. „ panáhi duam.
3. „ „ kadím.
4. „ panáhi.
5. „ „ tá hayát.
6. „ „ miádí, 25, 10, 20, 30 sál.
7. „ „ tá kaimi máfi.
8. „ „ „ makán.
9. „ „ tá khidmat makán.
10. „ „ miádi bandobasti.
11. „ „ tá sep.
12. „ maurúsi.
13. „ máfidár.
14. „ ardási.
15. „ khairáti.
16. „ takiádár.
17. „ hakman maurúsi.

No. 11, dated 14th January 1889.

From—L. W. Dane, Esquire, Settlement Officer, Gurdáspur,
To—The Commissioner and Superintendent, Lahore Division.

In reply to your No. 9, dated 4th current, I have the honor to intimate that the procedure adopted with reference to the entry of different classes of tenants in the record of rights was demi-officially communicated to the Settlement Collector, Amritsar, direct. A copy of the latter is enclosed and sufficiently explains the procedure followed. I have not in any case, except where there was an agreement of the parties, altered the status of the tenants, but felt myself unable to class tenants under the new Act otherwise than as tenants having a right of occupancy and tenants not having such a right. This classification appears to be that contemplated in Form XII, Financial Commissioner's Circular No. 30 of 1888. Tenants who were recorded in the jamabandís as possessing a right of occupancy, or who could show that they have acquired that status by decree of Court or agreement, were recorded as occupancy tenants, and the rest as non-occupancy tenants with a verbatim description of the terms on which they held according to the former settlement records in the column of remarks. In this way I believe that no possible injury can be caused to any rights they may possess, while the tenants have been classified in the only way contemplated by the present statistical returns.

Demi-official dated 21st December 1888.

From—L. W. DANE, Esquire, Settlement Officer, Gurdáspur,
To—The Settlement Officer, Amritsar.

I AM afraid I have been an unlimited time in answering your letter of August 8th about "panáhi" tenants. We have got practically all the classes you mention, *viz.*—

panáhi duami or tá duam,
panáhi,
panáhi miádi,
panáhi tá hayát,
panáhi tá kaimi máfi,

as well as what Mr. Roe in 1872 in Shahpur Kandi called kabizán and shartia tenants.

In preparing the jamabandís the broad distinction I have observed is tenants with a right of occupancy and tenants without such a right. As occupancy tenants I have only recorded those who were given that right by Kaim Ali, Extra Assistant Commissioner, in 1870, when revising the record of tenant rights, or those who have since acquired the status. The rest are all classed as tenants without a right of occupancy, but to prevent trouble the conditions of their tenancy recorded at settlement are shown in the column of remarks.

In the new Form XII only those two main classes are recognized, and if a man has not the peculiar legal status of a tenant with a right of occupancy, he must fall under the other head I think.

In Shahpur Kandi in the case of the kabizan, who were something between an owner and a tenant, the proprietors have in most cases agreed to their being recorded as occupancy tenants, and where such was the case, I have had an entry made in the mutation register, and the jamabandi corrected accordingly.

No. 121, dated Lahore, 9th February 1889.

From—C. M. RIVAZ, Esquire, Commissioner and Superintendent, Lahore Division,
To—The Senior Secretary to Financial Commissioner, Punjab.

IN continuation of my letter No. 82 of the 28th ultimo, I have the honor to forward a copy of a letter from the Settlement Officer of Gurdáspur, No. 89 of the 2nd instant, and to state that as regards the particular class of tenants referred to, namely, those who were styled "duami" at Mr. Prinsep's settlement, Mr. Dane seems right in his view that they should now be recorded as tenants having a right of occupancy without any particular section of the Tenancy Act being specified; and I beg that the opinion expressed in paragraph 2 of my letter above quoted may be considered subject to this reservation.

No. 89, dated 2nd February 1889.

From—L. W. DANE, Esquire, Settlement Officer, Gurdáspur,
To—The Commissioner and Superintendent, Lahore Division.

IN continuation and correction of my No. 11 of 14th ultimo, on the subject of the system followed in recording tenants in the present record of rights, I have the honor to intimate that in one case, that of the "duami" tenants, who under the terms of their tenancy, as entered in the settlement record of 1865, cannot be ejected, I had issued instructions that such persons were to be entered as tenants with a right of occupancy without specifying any section of the Act since they practically possess such a right. Up to the present, as far as I am aware, no objection has been raised to this procedure. I regret that by an oversight I omitted to note this in my previous letter on the subject.

Note by the Hon'ble the Lieutenant-Governor of the Punjab and its Dependencies dated the 27th May 1889.

The question regards the entry to be made as to the nature of these tenants' interests in the amended edition of the record of rights now being prepared by Revenue Officers in districts under settlement. Looking to the present law contained as to right of occupancy in Act XVI of 1887, and as to the record of rights and the amendment thereof in Chapter IV of the Land Revenue Act of 1887, it appears to me that while such Revenue Officers are bound to follow strictly the rules of Section 37 of the latter law as to variations of entries in existing records of rights, which rule forbids variations except under the conditions specified in clauses (*a*), (*b*) and (*c*) of that section, yet it is necessary that a note should be attached to the amended record explaining that, in the absence of the conditions described in clauses (*a*) and (*b*) of that section, the entry in the previous record of right has been simply repeated in obedience to the law, and that where such entry purports to show that a tenant is "panáhi" or anything else short of an occupancy tenant, he may nevertheless be entitled to occupancy right under the provisions of the Tenancy Act of 1887. The reasons why such a note seems necessary are as follows:—Under Section 6 of Chapter II of the Tenancy Act it is evident that most, if not all, of the tenants in respect of whom we are repeating these panáhi entries may nevertheless have by law a right of occupancy. The presumption in fact is that almost all of the tenants recorded as panáhi of various classes (see Colonel Wace's note) who have retained possession of their holdings have a right under Section 6 (if not also under Section 5), for all of these men must, I think, have been entered as maursúís in the first regular settlement records, and suits resulting in a decree establishing the contrary in favour of landlord have been few. If all were not entered as maurúsís at first regular settlement, the exceptions must have been men of some very peculiar status, as the idea of giving new rights of any kind to tenants previously recorded as tenants-at-will was one quite opposed to Mr. Prinsep's general views and instructions. Where the tenant was recorded as maurúsi at first regular settlement of certain land, and is still in occupancy thereof, the law of Section 6 is that he shall be deemed to have a right of occupancy therein, unless the contrary has been established by a decree of Court in a suit instituted before the passing of the Act. If, therefore, such a tenant sued for a declaration of his right of occupancy, or to contest his liability to ejectment, the Courts would apparently be bound to decree in his favour. It is possible that, with reference to Section 111 of the Act, the Courts might refuse a decree on the proof by the landlord of an agreement by the tenant voluntarily resigning his right of occupancy, but the language of Section 6 is so express that this is not clear, and in any case it is not likely that a mere entry in Mr. Prinsep's settlement records would of itself be held to be sufficient proof of a voluntary agreement to resign occupancy right. Considering the general ignorance of the law among the agricultural population, and their liability to assume that the record made in a settlement purports to be the Settlement Officer's decision as to rights, I think such a note ought to be added to the new edition of the record now to be made.

2. As to Clause (v) of Colonel Wace's instructions, I think that, unless any legal difficulty is apparent, we might go further than he proposes and in all these settlements avoid the use of forms classifying tenants into the two heads of occupancy and non-occupancy and substitute a form classifying tenants under the definitions actually used in the former Khataunís and repeated in the new edition. It is these Khataunı́ or Jamabandi papers which are the real records of rights. Any other forms are, I believe, mere abstracts for statistical purposes.

3. In the new Khatauni Jamabandi papers where a tenant was entered in the old records as "panáhi" for a term of years or for life and the term has expired or the tenant has died and been succeeded by an heir, I think the entry should be "panáhi tá haiyát ke wáris" or "panáhi miádi kághazát sábik men" or as "wáris" of such a panáhi if there has been a succession. In all other cases I think the identical term of the former entry might be repeated.

I would not, under the circumstances, go summarily into the question whether service has ceased or status been altered. To this extent I think Clauses ii, iii and iv of Colonel Wace's instructions should be modified.

4. The present tenancy law and land revenue law are those by which we are now bound, and they differ from and override the old laws in important particulars; but it is worth while to make some remarks as to the old state of the tenancy law which regulated the matter in the days when the revision of 1870 was made. It is doubtful whether that revision was so complete as it ought to have been and whether it succeeded in its object in restoring the entry of occupancy right in all cases in which the tenants were entitled to it under the law. But such deficiencies, if any, cannot be amended now, except by agreement or decree of Court, as in amending the previous record we are to take it as it stands since the revision of 1870.

By Section 6 of Tenant Act of 1868 every occupancy tenant by the record of a regular settlement theretofore previously sanctioned was to be presumed to have right of occupancy unless the landlord *in a regular suit proved either* (*a*) right to eject by custom, or (*b*) voluntary admission before a Settlement Officer by tenant of absence of right and record of such admission at time by the Settlement Officer. In accordance with this very express provision of the law, it would seem to have been the duty of the officers appointed in 1870 to revise summarily the entries of tenant right in Mr. Prinsep's Settlement papers to have simply restored in favour of the tenant in all cases where a decree in a regular suit for proprietor was absent the first regular settlement entry of occupancy right. Accordingly Rule 5* of the rules issued to the revising officers was to that effect, but, rightly or wrongly, another rule allowed an exception to be made. It will be seen that the last clause of Section 2 of the Tenancy Act of 1868 provided that nothing in the Act shall affect the operation of any decree of Court or of any agreement between landlord and tenant when such agreement is in writing, or recorded by the proper officer in the record of a regular settlement sanctioned by the Local Government. Upon this clause was based Rule 9 of the rules to revising officers directing no correction to be made in cases where the recent settlement entry is in accordance with a decree of Court or an agreement in writing between the parties of the nature described in Section 2 of the Act. But as the recent settlement record was not then sanctioned, an agreement merely recorded in it was clearly not then an agreement of the nature described in Section 2, and the rule must apparently have meant that a separate agreement in writing was what was necessary to justify the revising officers in not restoring the first regular settlement entry of occupancy right. This appears to have been the view taken by the Commissioner of Lahore in 1870, and page 10 of Munshi Ghulám Nabi's report in the printed papers concerning the revision of 1870 shows that the Commissioner ruled that a kabuliyat by a tenant for a lease for a term of years was an agreement in writing of the kind contemplated by Rule 9. This may explain why no restoration of entry of occupancy right was made in respect to many panáhi miádi tenants, but it does not explain how, if the revising officers obeyed the rules, they failed to restore in the case of so many panáhi tenants of various kinds, most of whom could not have given kabuliyats, and it ought to be noted that for the reasons given in page 35 of Munshi Ghulám Nabi's report the Courts in the few suits that came before them at the time always set aside these kabuliyats as not binding on the tenants. They were, I consider, justified in so doing, for I do not think that any of the admissions of no right of occupancy supposed to have been made in Mr. Prinsep's Settlement by recorded occupancy tenants can be held to have been really voluntary.

* *Vide* first annexure to the letter of the Financial Commissioner, No. 342, dated 3rd April 1872.—Proceedings of Punjab Government, Agriculture, Revenue and Commerce, March 1874, No. 23.

No. 112 C., dated 1st July 1889.

From—E. D. Maclagan, Esquire, Junior Secretary to Financial Commissioner, Punjab,

To—The Commissioner and Superintendent, Lahore Division.

I am directed to acknowledge the receipt of your letters No. 82, dated 28th January 1889, and No. 121, dated 9th February 1889, in which you ask

for instructions as to the manner in which, at the present settlements of Amritsar and Gurdáspur, those tenants should be recorded who were entered in Mr. Prinsep's settlement of 1865 as protected (panáhi) for a term of years or otherwise, and were not subsequently awarded an occupancy status under Section 6 of Act XXVIII of 1868. In reply, I am to forward a copy of the papers mentioned in the margin, and to add as follows.

Extract from a note by Colonel Wace, First Financial Commissioner, dated 18th February 1889.

Note by His Honor the Lieutenant-Governor of May 27th, 1889.

2. Colonel Wace's note of the 18th of February contains a review of the question to be decided, and an account of the manner in which Colonel Wace proposed to deal with it. Colonel Wace referred his proposals un-officially to Government for approval, and the orders of the Lieutenant-Governor on his proposals are given in His Honor's note of the 27th May. Mr. Young desires that you will now carry out the orders contained in His Honor's note, and will submit for approval, after reference to the Settlement Officers of Gurdáspur, Amritsar and Lahore, a copy of the "kaifiyat" which you propose in accordance with those orders to enter in the jamabandi of villages in which the class of tenants in question is found.

The Settlement Officer, Gurdáspur, should proceed to revise the entries relating to these tenants which he has caused to be made in the record of rights, as reported in his letters No. 11, dated 14th January 1889, and No. 89, dated 2nd February 1889, in accordance with the instructions of His Honor the Lieutenant-Governor.

No. 113 C.

COPY of the above letter and of the letters to which it is a reply, with enclosures, forwarded to the Commissioner and Superintendent, Káwalpindi Division, for information, with the enquiry whether there are any tenants of the class referred to in the districts under settlement in his Division. If on enquiry it is found that there are such tenants, a copy of the entry to be made in the settlement records of the districts of the Lahore Division will be communicated hereafter.

No. 114 C.

COPY of the above forwarded to the Junior Secretary to Government, Punjab, in continuation of recent un-official correspondence.

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SELECTIONS FROM THE RECORDS

OF THE OFFICE OF THE

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